THE GENEVA PROTOCOL

FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES

BY

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LONDON
P. S. KING & SON, LTD.
ORCHARD HOUSE, 2 & 4 GREAT SMITH STREET
WESTMINSTER

1925

" The Members of the League recognize that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations."—*Article 8 of the Covenant.*

" Animated by the firm desire to ensure the maintenance of general peace . . . Recognizing the solidarity of the members of the international community; Asserting that a war of aggression constitutes a violation of this solidarity and an international crime . . . The undersigned . . . agree as follows : "—*Preamble of the Geneva Protocol.*

Printed in Great Britain by Butler & Tanner Ltd., Frome and London

FOREWORD.

In this study of the Geneva Protocol attention has been devoted to the provisions of the Protocol itself rather than to the history of previous League discussions on the subjects with which it deals. This is not because that history is not of great importance to the proper understanding of its terms. The Protocol is not an isolated or fortuitous event, but the consequence of a gradual evolution of governmental and popular opinion in which a great part was played by these League discussions; their history has only been omitted because it would make this book too long to be of use to the general reader for whom it is intended.

The reader will note that the Report adopted by the Assembly as an official commentary on the meaning of the Protocol is sometimes criticized. In fact, as an official commentary it leaves much to be desired. It is often said that the Protocol was hastily prepared. But the Protocol at least was the result of much previous work and of prolonged and careful consideration by the Fifth Assembly. The Report, on the other hand, was prepared with amazing speed. The rapporteurs made their draft literally in the last few days of the Assembly's meeting. This draft was accepted by the Committees without any adequate debate. So able was the work of the rapporteurs that every one would accept the greater part of it. But on some points, and particularly on points to which the British delegates attached importance, it is open to objection and were it used by the Permanent Court of International Justice as a binding exposition of the Protocol, it might become a positive danger. If therefore the British Government accepts the Protocol it should only do so with the condition

that it is in no way bound by the views expressed in the Report.[1]

It should be explained that the term "disarmament" is used throughout as an equivalent for the more accurate term "reduction and limitation of armaments." The two expressions have always been used to mean the same thing by the members of the Assembly, and it may be hoped that the text is clear enough to prevent misunderstanding. Likewise, the term "arbitration" is given two meanings: the correct legal meaning which it has in the text of the Protocol itself, and the broader though loose and inaccurate meaning which it was given both in the debates of the Assembly and even in the Report, namely, the compulsory settlement by pacific means of international disputes. Again it may be hoped that the text is clear enough to prevent confusion.

Whatever impression the following pages may create, it has been the author's purpose not to defend the Protocol but to make a contribution to the discussion of its proposals. Nothing could be more unfortunate than that the British Government should accept the Protocol, if the British peoples did not fully comprehend the obligations that were thus assumed. In the hope that this book may serve a useful purpose by explaining the meaning of its terms and the intentions of those who drew them up, the author has hastened its publication without taking time to remove the defects of which he is too painfully conscious.

January 30, 1925.

[1] References to the Report have been made throughout to a White Paper published in October 1924, Cmd. 2273, which contains the texts both of the Report and of the Protocol.

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CHAPTER I.

INTRODUCTION.

It has been said by an eminent authority that the Geneva Protocol is a simple document. That may be true if it is examined in conjunction with the Covenant by some one who is familiar with the general working of the League of Nations. But most people are not familiar with the working of the League, and they are often without the text of either the Covenant or the Protocol. The object of this book is to provide them with the text of both, and shortly to describe the reasons which led to the insertion of the various provisions of which the Protocol consists. Its purpose is not to defend the terms of these provisions—for that a more elaborate work would be required—but to explain, without prejudice or pre-judgment, what they really mean. No apology is needed for this modest enterprise. For the Protocol is an attempt to end the age-long misery of war, and to check and limit the competitive preparation for it which warps the whole social life of the world to-day. To this end it provides for a world-wide Conference on Disarmament to meet as soon as the necessary plans can be prepared. It sets up the machinery for the preparation of these plans. To create for the Conference the conditions of success, and to solve beforehand some of the vital political problems by which it would otherwise be faced, it sets up a comprehensive system for the compulsory settlement, by judicial, conciliatory, or arbitral means, of international disputes of every kind. For the same purpose it creates

a system of security, of joint defensive action by the signatory states in support of any one among them which may be aggressively attacked. It is, in short, not only a project for disarmament, but the foundation of a system of legal justice among nations, backed by the rudimentary beginnings of an international police. There are no other questions of equal importance to these before the public to-day; and none that are so generally neglected and misunderstood.

Whenever a departure is made from the plain task of exposition, a frankly British standpoint has been taken up. It may or may not be true that on all great questions of foreign policy the true interests of the British Empire are the same as the interests of the world at large; that is a matter of opinion. What is certain is that the British people will not accept the Protocol, or any other international engagement, unless they believe that it is right, from a strictly British point of view, to do so. They have never cavilled at nor shirked their international duty, but they have held and hold to-day that their first duty is to themselves and to the vast but scattered Empire which they rule and lead. It is not only right, therefore, but essential, in setting forth the obligations which the Protocol involves, to try to show how far, and in what ways, they touch the vital interests upon which the well-being of the British commonwealth depends.

For this purpose a number of assumptions have been made, the validity of which will not be argued, but which must be explained in order that what follows may be clear.

The first of these assumptions is that the British Governments of the last few years have been right in founding their foreign policy on the League of Nations, and that by their acceptance and frequent application of the principles of the Covenant they have promoted the true interests of those with whose destiny they were charged. That such has in fact been their policy no one will dispute who examines the declarations made on foreign affairs by Lord Balfour, Mr. Bonar Law, Mr. Baldwin, and Mr. Macdonald, or the actions and the speeches of the various British government

representatives at Geneva. If their policy was sound, it follows that anything which will help to reinforce the principles of the Covenant or to render simpler and more effective their full application to international politics of every kind should, from the British point of view, be warmly welcomed. It has been claimed that the Protocol does this: whether the claim is true is therefore one of the points which must be dealt with.

The second assumption made hereafter, and it is only a different statement of the first, is that the prevention of all international war is the chief of British interests. This assumption does not rest merely on the fact that all war is in the long run detrimental to international commerce and finance, upon which the prosperity of Great Britain, above all countries, vitally depends. It also rests on another and a more important aspect of the international position of the Empire. If the system of what the authors of the Protocol call "private war"—that is to say, war between individual states—is allowed to continue, there can be no doubt that in the fullness of time it will end in some appalling international catastrophe, infinitely more destructive than the catastrophe of ten years ago. There are, it is true, some people who still profess to believe that the present causes of international discord and unrest can gradually be removed by a series of local and restricted conflicts—"minor explosions," they are wont to call them—and that in due course the world will thus settle down to an epoch of relatively stable peace. But the whole of history is against them. Almost every leading statesman in the world and almost every competent historian is agreed that, if the system of war goes on, the events of 1914 will be repeated on a still greater scale. There could be no greater danger to the safety and even to the existence of the British Empire. We are apt to forget how nearly the last war brought us to our knees. We have yet to learn how near to success was the German attempt at submarine blockade. If the old system goes on that danger will be greater than it was before, and to it will be added the even greater danger of aerial attack. To be an island may soon become a source of weakness, rather

than of strength. Again we forget that the war was a direct contributory cause, if not the sole cause, of the difficulties and problems which imperial statesmen have had to face in Ireland, in Egypt, in India, in Burma and elsewhere—problems which we are still very far from having solved. Even with the self-governing Dominions the events of Armageddon have left us with a new and—however much may be said for the change—certainly a more difficult relationship. There have indeed been moments in the last few years, when foreign observers have believed they could discern the signs of the beginning of the end of our imperial greatness. To them, as to some of the peoples now within its fabric, the British Empire has no more divine right to be eternal than the mighty Empires of the past.

Another world war like that of 1914 is perhaps the one event that could give immediate reality to the menace of these forebodings. For in such a war we should inevitably be involved. And we could hardly hope to be as fortunate again as we were in 1914. Neither then, nor at any time since the Empire grew to power, have we had to meet simultaneous attacks on different parts of our imperial system. Yet such a danger is more than likely if a new world war breaks out. With our military strength perforce concentrated near the centre of the Empire; with vast responsibilities scattered wide throughout the world; with many subject peoples struggling, in varying degrees of brooding or active discontent, for self-government or even for national independence; relying ourselves for our day-to-day existence on the universal and unbroken mastery of the ocean highroads of the seven seas—we would be, in a very special way, vulnerable to such simultaneous attacks.

And against such dangers—racial, political and military all combined—armaments by themselves cannot avail. In "preparedness," if it stands alone, there is no safety. It is from peace, and only from peace, that the stability and the political progress of the Empire can result. For these reasons we, of all peoples, have most to gain from any plan that will prevent, and, if it may be, abolish the scourge of war.

The third assumption made hereafter is that the British people have a vital interest in the reduction and limitation of national armaments of every kind, by a common plan to be accepted by the nations of the world. In some ways, it is true, our interest in such a plan seems less than the interest of other countries. Since the reductions we have already made—for example in our army—have been greater than the reductions made by other peoples, we have less to gain than they from further saving on our military budget. But even from the narrow standpoint of national economy we have still much to gain. If we could secure a comprehensive scheme of reduction and limitation covering weapons of all kinds, we could save millions which otherwise we shall inevitably spend on our air-force; and in so doing we should notably retard the process that is fast wiping out the advantage we derive from the fact that we are an island. Likewise we could save still more millions that we have begun again to spend upon the strengthening of the navy; in so doing we could end our new competition with other naval powers in cruisers and submarines, and thus do away with the one serious danger that threatens our naval position.

The economic gains of a successful policy of disarmament would thus be, even for us, and quite apart from the strategic gains, of some importance. They would render possible either great reductions of taxation or rapid progress with social reform—perhaps even both. And if it be true that in some departments, as for example in the army, there are no further reductions we can make, that we are already down to the bare minimum essential for the maintenance of order in our scattered realm, surely that only makes the greater the political advantage we shall reap from securing similar reductions in the armaments of other states whom for this purpose we cannot but regard as our competitors and potential foes. There is strong ground, therefore, for this third assumption.

The last assumption is no less straightforward than the rest. It is simply this: that the average citizen is, broadly speaking, ready and willing, if he is shown the way, to apply in international affairs the same rules of action that

he applies in national affairs; that, since his whole social life within the state rests on the collective use of force, in the persons of the police, against the criminal who disturbs the public peace or violates the rights or safety of his neighbours, so, in principle, the average citizen has no objection to the collective use of force by the community of states against the international criminal who violates the peace of nations or attacks the rights or territories of his neighbour states. Whether such collective use of force by the community of states can in fact be organized as a practical and working system is another question, and one that is open to debate; it will require attention at a later stage. What is now assumed is that, if it can be done, the peoples of the world are ready for common action against a disturber of the peace, analogous to the action of the Sheriff's posse, from which the system of the police has, by a continuous and unbroken process, evolved in England. In other words, since they cannot in international affairs—still less than in national affairs—do away altogether with the use of force, they prefer that force, limited and controlled, should be behind the law, rather than that force, unlimited and uncontrolled, should remain without the law and should cause the international disorders from which countless generations of men have suffered in the past.

CHAPTER II.

THE GENESIS OF THE PROTOCOL.

THE Geneva Protocol is an instrument upon which the representatives of all the Members of the League at the Assembly in October last reached provisional agreement for the purpose of securing the mutual reduction and limitation of their national armaments. It is the direct outcome, and as its authors thought, the logical conclusion, of the work done during four years by the various organs of the League for carrying into effective application the undertakings of article 8 of the Covenant. Its main purpose, therefore, is what is loosely called disarmament; and unless this purpose is achieved, the Protocol itself will come to naught. But it is sometimes said in criticism of the Protocol that, whatever its ultimate purpose, there is little in it that concerns disarmament and much—too much—on other subjects. This criticism can best be met by a brief account of its antecedents. This account may also be of use to those who think that because the Protocol was drawn up and adopted in the brief space of a five weeks' conference it must be hasty and ill-considered work. For the truth is the reverse. Whatever its defects, the Protocol is the result of longer, more anxious and more laborious consideration than has been given to almost any diplomatic document in the past.

As has been said, the starting point of the work from which the Protocol has resulted was article 8 of the Covenant, by which the Members of the League "recognize that the maintenance of peace requires the reduction of national armaments," and in which it is provided that "the Coun-

cil . . . shall formulate plans for such reduction." From the earliest days of the League its Members took this article very seriously. They considered that it involved a duty towards themselves and a pledge towards the ex-enemies, whom the Allies had disarmed "in order," in the words of the Peace Treaties, "to render possible the initiation of a general limitation of the armaments of all nations." At the First Assembly, therefore, in November 1920, the question of article 8 was vigorously taken up. The members of the Assembly still had fresh in their minds the recommendation of the great Financial Conference at Brussels which the Council of the League had summoned a month or two before, urging that the Council should confer at once with the various governments "with a view to securing a general reduction of the crushing burdens which, on their existing scale, armaments still impose on the impoverished peoples of the world, sapping their resources and imperilling their recovery from the ravages of war." Even before the Assembly met the Council had already established the Permanent Advisory Commission [1] on military matters for which article 9 of the Covenant provides, and had decided that it should consist of military, naval and air experts of each of the states (then eight, now ten) whose representatives composed the Council. The Assembly, while they did not in any way disapprove the plan adopted by the Council, nevertheless took the view that a Commission composed exclusively of military experts was not well adapted for the preparation of a scheme for the general reduction and limitation of armaments. On the proposal of the British Government delegation,[2] therefore, they proposed the creation of a new body, with the egregious title of the Temporary Mixed Commission,[3] to whom they entrusted the task of preparing a comprehensive and practicable plan for the carrying out of article 8. This new Commission was to consist of military, economic and financial experts, representatives of employers and of working-

[1] Commonly known as the "P.A.C."

[2] The three principal delegates were Lord Balfour, Mr. H. A. L. Fisher (both members of the Cabinet) and Mr. G. N. Barnes.

[3] Commonly known as the "T.M.C."

class opinion, and finally of responsible persons with experience of political affairs. Its members, like the members of other League bodies charged with the drafting of schemes for the consideration of the Council, were not to be representatives of governments, but independent persons, usually of course in close touch with their governments, but chosen for their individual knowledge, experience or capacity.

This Temporary Mixed Commission was duly established by the Council and began its labours in March 1921, that is to say only a few weeks after the First Assembly had dispersed. It began with the consideration of the illicit traffic in and private manufacture of arms and ammunition. On these subjects its discussions at an early date showed hope of some profitable result, for the governments of Europe were not unfavourable; the difficulties to be overcome lay rather in the attitude of a great manufacturing nation across the Atlantic whose official attitude at that time was one of uncompromising hostility to the League. But when the Temporary Mixed Commission left these side issues (important, indeed, but secondary from every point of view), when it approached the real task with which it had been charged, the situation changed. The majority of its members did not hesitate to say that in their view the preparation of a scheme for the further reduction of armaments was premature, that their countries were many of them surrounded by immediate military dangers such that their armaments might fairly be claimed to be already at "the lowest point consistent with national safety," that there were still a number of great military powers outside the League, whose co-operation in a policy of disarmament could not yet be hoped for, and whose attitude in the meantime was menacing in the extreme. In short, they held, and held, so it proved, immovably, that, desirable as disarmament might be, it meant risks for certain states or groups of states which no one could expect that they would take.

It was useless to argue in reply, as some members of the Commission tried to do, that a general scheme of reduction would, by imposing proportionate diminutions of armaments and armed forces on every state that joined it, leave

all of them relatively as strong, and therefore relatively as safe, as they were before. To this contention, when it was put forward, they made a double answer.

First, they pointed out that the argument collapsed unless the scheme of reduction were accepted and effectively applied by every state, or practically every state, throughout the world. If even one country with any pretentions to military power stood out, that would impose such injustice and such risks on all its neighbours that they too would in practice be unable to carry out the reductions they might otherwise be willing to effect. They added that the hope of securing the help of Russia in such a scheme was at that time almost indefinitely remote, that this fact affected vitally just those European countries the reduction of whose forces it was most evidently desirable to secure, and that without the co-operation of these countries no general scheme would be worth the paper on which it was drawn up.

Second, they urged that, while it may have once been true that proportionately equal reductions of military armaments and forces by international agreement would leave different countries relatively as strong as they were before, in modern conditions this proposition no longer held good. As this theory strikes at the root of the classical argument for disarmament, the reasons for it are worth attention.

It was said by those who took this view that the application of science to war had introduced such changes in the methods and weapons with which war is waged that no disarmament agreement could now include and limit all the vital factors on which military strength depends. Before these changes were introduced, the weapons that were useful in war served, broadly speaking, no other purpose. But nowadays the weapons upon which success in war will probably depend have peace-time uses of great importance. Aircraft furnish an obvious example. Commercial aircraft are in their infancy, but they have already become an important factor in the economic system; and with every month that passes their efficiency, and in consequence their utility, increase. Even if it were possible, which it is not, it would still be undesirable to limit by

international agreement the number of commercial aircraft which each state chooses to produce or to maintain. Yet the qualities required in a commercial aeroplane—weight, lifting capacity, speed, reliability, extended radius of flight—are precisely the qualities required in a military bombing machine. The transformation from commercial to military use is the work of an hour or two. And in the view of many experts, bombing aeroplanes, by means of which whole cities might be wiped out, and the resistance of an enemy quickly paralysed, will almost certainly be the principal offensive weapon of any future war.

The same argument applies to what will, again according to the experts, be the chief auxiliary weapon used by aircraft—poison gas. The power to produce poison gas on a large scale and at short notice for warlike use depends on the possession of chemical factories. These factories are indispensable for many peace-time industries, they can experiment in military gases without any possibility of detection, their transformation to military use can be very rapidly effected. It is true that some authorities believe that an international agreement against the use of gas might, on certain conditions, be made without too great danger of its evasion.[1] But in fact no power has shown the least disposition to accept the conditions which such an agreement would involve; and chemical factories, the number or output of which cannot obviously be limited by an international disarmament agreement, therefore remain a vital element in the potential military strength of countries which possess them. Similarly, fleets of heavy motor lorries or tractors, which have been organized by some countries for postal and other government services, may prove a military factor of importance in facilitating the concentration of troops, in the transport of artillery and ammunition, or as an auxiliary to air-force operations. These again can in no circumstances be limited by international agreement.

The practical application of these arguments to the potential military strength of different countries needs no elaboration. A moment's thought must show that in all

[1] e.g. Major Victor Lefebure.

the departments which have been mentioned and in other similar departments, some countries have necessarily, as a result of their natural resources or industrial organization, an immeasurable superiority over others. Germany, for example, leads the world in commercial aircraft, chemical production and nationalized motor services. Mutual reduction of armaments, therefore—and this is the conclusion to which the above arguments were used to lead—on a scale which involved proportionately equal sacrifices in factors of military strength which *can* be limited by international agreement, would in fact as between, say Germany, and a country without commercial aircraft and chemical industry or motor services, greatly increase the relative military strength of Germany. In other words, proportionately equal reductions of factors of military strength which *can* be limited would increase the military importance of the natural or economic advantage of some countries over others, and might do so in a way which, in the event of a sudden and carefully prepared attack, would prove decisive. It was therefore, so the argument ended, elementary common-sense for governments of powers suffering from such natural or economic disadvantage in the factors of military strength which can *not* be limited, to retain full freedom to reduce the margin of this disadvantage by the maximum effort in other military preparation which their people might be able to sustain.

To this contention there was added a second rather like it. An international agreement for the reduction and limitation of national armaments, it was said, must involve an undertaking by every signatory Power neither itself to increase, nor to assist any other signatory to increase, its armaments above the limits mutually agreed upon. Without such an undertaking no disarmament scheme could be of any value. But if war were subsequently to break out such an undertaking would evidently confer a great advantage upon countries with great industrial resources. For both the rapid mobilization of large forces and the conduct of large scale operations depend in modern conditions on the industrial machine by which the armies in the field are sup-

ported. If one power has a great industrial system which its government can immediately take over, which perhaps it can secretly prepare for a long time in advance, that will clearly give it a great military superiority over another power which has to depend for its supplies of arms and ammunition and uniforms and so on, on the industries of other countries, perhaps geographically remote. And both the margin of this superiority, and its military importance in case of a sudden outbreak of war, will be greatly increased by a disarmament agreement which prevents the country without adequate resources of its own from making in time of peace the maximum military effort of which it is capable, and which forbids it to accumulate the stocks or organize the forces which might enable it to wipe out the disadvantage from which it suffers.

Confronted with contentions such as these, the Temporary Mixed Commission were unable at their early meetings to make any progress with their chief task, the preparation of a practical scheme for the reduction and limitation of national armaments. At every turn they were faced by the dilemma that, for these and similar reasons, some countries would certainly not take part in such a scheme, while unless the scheme were generally adopted it would impose injustices and risks on those who did take part, which no government could be expected to accept. For many months the dilemma led to deadlock. And it was only when the problem was approached from another point of view, only when a new start was made by linking the question of armaments to that of security against attack, that there appeared the hope of an issue.

This new conception of the problem proved to be decisively important. The principle that security and disarmament must go together is now universally accepted; it has made the reduction of armaments for the first time a matter of practical politics; all that still remains in doubt is the method by which the principle shall be applied. What, then, was the genesis of this new conception? It sprang first from the most obvious difficulty with which the

Temporary Mixed Commission had been faced—could any progress be made with disarmament unless every state throughout the world took part? The difficulty itself suggested a possible solution: co-operation for mutual defence among states which did disarm against attack on any one of their number, from whatever quarter that attack might come. Since a combination of a large number of states even with reduced armaments must clearly be stronger than any single aggressor state which had not disarmed, the plan would make those who wanted to reduce their military burdens independent of the danger that otherwise must come from isolated states who wished to stand aside. This new idea was embodied in four resolutions laid before the Temporary Mixed Commission in July 1922,[1] the purport of which was broadly that reduction of armaments to be effective must be general and that there could be no general reduction without some mutual guarantee of security against attack. These resolutions met with an immediate response. There was at first the widest divergence as to how they could be carried into practical effect. But on the principles involved, unanimity was rapidly secured. The Temporary Mixed Commission was able to send to the Third Assembly in September 1922 a report, founded on these principles, to which every one of its members was ready to agree.

The principles were likewise accepted by the Third Assembly, but only after a stiffer fight than there had been in the Temporary Mixed Commission about the method by which they could be carried into practical effect. The debates of that year (1922) will not be soon forgotten in Geneva, nor indeed elsewhere, for they laid the foundation of the scheme of world disarmament which some day will be brought about. They were full of dramatic conflicts between those who wanted security before disarmament and those who refused to dissociate the two, between those who found security in the old methods of partial alliances against particular dangers and those who found it in the new method

[1] See Annex II. The Resolutions were adopted without change by the T.M.C. in September 1922.

of a general alliance against aggression of every kind; they were full too of dramatic compromises, which ended in final agreement upon the text of resolutions [1] to which all the assembled governments were ready to subscribe. The immediate result was a formula which definitely committed the governments of the Members of the League to the proposition that security and disarmament must go together, and which instructed the Temporary Mixed Commission to prepare for the Fourth Assembly a draft Treaty to give effect to the principles on which they were agreed. The importance of this result lay not least in the fact that it was warmly accepted by the governments of four Great Powers; and it is noteworthy, from the British point of view, that the British Government delegation, led by Lord Balfour and Mr. Fisher, played a large part in the negotiations and debates by which the final formula was reached. The ultimate psychological effect of the debates was perhaps even more important still. They brought home to the mind of the government representatives assembled in Geneva, and indeed in great measure to the world at large, the real meaning of the problem of security. They obliged the politicians and journalists there collected to face the facts; to realize that in large parts of Europe both peoples and governments were living under a menace of armed invasion which dominated the whole of their national lives and policies; that this menace was not a figment of their imaginations, but a practical military danger of which they had every right to be afraid; and that until measures were taken, by collective action against all aggressive war, to exorcise the passion of fear in which all their military policy was conceived, no progress would or could be made with the execution of the obligations of the Covenant to reduce and limit national armaments.

This brief account of the first two years' work of the Temporary Mixed Commission may perhaps explain why the Geneva Protocol is not concerned exclusively with disarmament, but also, and in large measure, with the question of security, or, as it is now called, of "sanctions," which

[1] See Annex III.

being interpreted means joint action against aggressive war. After the resolutions of the Third Assembly had been passed, the two questions were linked inseparably together. The subsequent work of the Temporary Mixed Commission served only to strengthen the connection. Although this work had much influence on the form which the Protocol assumed, there is no need for present purposes to describe it in any detail. The Temporary Mixed Commission duly carried out the task which the Third Assembly laid upon it. It prepared a draft Treaty, now famous as the Draft Treaty of Mutual Assistance, in which it embodied an elaborate system of security, founded on mutual undertakings among all states who reduced their armaments; to this end it went very far in prohibiting and outlawing aggressive war. The system of security consisted, broadly speaking, in the amalgamation of general guarantees among all states, with partial alliances among some of them, under the control of the Council of the League. This Draft Treaty was considerably amended in September 1923 by the Fourth Assembly which, without in any way expressing an opinion on its merits, referred it to the governments of all states, whether Members of the League or not, with an invitation to them to furnish to the Council any observations on it which they might care to make. A great many governments in due course complied with this invitation; and the answers which they made, their criticisms of the Draft Treaty, their proposals for its amendment, together with the Draft Treaty itself, formed the raw material from which in great part the Fifth Assembly built up the Protocol.

This of course was particularly true where security was concerned, for it was to this question above all others that the Temporary Mixed Commission and the Fourth Assembly had devoted their attention. But the "replies" of the various governments on the Draft Treaty also furnished the source from which came the third great element of the Protocol—the element of what is loosely known as "arbitration." As will subsequently appear, "arbitration" dominates the whole system of the Protocol. It is the one respect in which the Protocol goes much beyond the existing

obligations of the Covenant. It is interesting to find, therefore, that like its provisions on security, the provisions of the Protocol on arbitration had their origin in the earlier discussions of the various organs of the League. But it must be admitted that these discussions had been much less profound and much less satisfactory than the discussions on security. The subject had first been raised in a tentative manner in the original debates of the Third Assembly on security, when certain Scandinavian delegates had pointed out that in the creation of a system of co-operative military sanctions against aggressor states an international machine of deadly power would be set up; that unless the greatest care were taken, there would be at least a risk that this machine might be put to wrongful uses; that even if the Council, in whose hands the operation of the machine was placed, were all of perfectly good faith, it might still be difficult for them to know which party to any given war had been the real aggressor. They urged that very often the real aggression consisted not in the commission of the initial act of war, but in a policy of provocation or injustice which at long last might make a conflict impossible to avoid. Against the dangers of misuse and to meet the genuine difficulties they pointed out, these Scandinavian delegates asked for moral and political guarantees; and they hinted that such guarantees might be found in the development of "arbitration," by which they meant the extension and completion of the provisions of the Covenant for the peaceful settlement of international disputes.

The subject next arose in a different form at a meeting of the Temporary Mixed Commission in February 1923. It was then proposed, as the basis for a system of security, that aggressive war should in all circumstances be forbidden; but it was objected that it would be both logically and politically unsound to forbid all war without at the same time establishing some alternative pacific means by which a definite and binding solution could be found for every international dispute. Against this objection it was urged, and urged successfully, first, that as a matter of history the domestic legal system of many countries had grown

up from the prohibition of private war even before adequate courts of law had been set up, and that by analogy the same process of evolution would probably be necessary in the community of states; and second that, in any case, while the governments of the world were ready, as the resolutions of the Third Assembly showed, to forbid aggressive war, they were not ready to go further in the compulsory settlement of disputes than they had already gone in the Covenant itself. There, so far as the Temporary Mixed Commission was concerned, the matter rested.

The Scandinavians returned to the attack in 1923 at the Fourth Assembly, where they found some new allies, and during the course of 1924 the replies made to the Council by the various governments on the Draft Treaty of Mutual Assistance showed that their views were slowly, perhaps, but steadily gaining ground. A number of governments, including the British Government, spoke of the development of the provisions of the Covenant concerning the settlement of disputes as being either a necessary addition to or a substitute for the system which the Temporary Mixed Commission had proposed.

It remained, however, for an independent though influential committee of private citizens of the United States to propose the formula with which the Fifth Assembly actually began its work upon the Protocol. This Committee, known from the name of its distinguished founder as the "Shotwell Committee," pointed out with force that what had been to many governments the real stumbling block in the Draft Treaty of Mutual Assistance was the provision which left to the Council the duty of deciding, with full and unlimited discretion, which party to any given war had been guilty of aggression. They proposed to limit its discretion by providing an adequate and automatic test of aggression, and they suggested that this test could be found in "arbitration." Their actual plan was this: that every signatory state should undertake to submit any dispute involving an outbreak or a threat of war to the Permanent Court of International Justice; that the Court should be empowered to declare when aggression had occurred; and

that any state which failed either to accept the jurisdiction of the Court or to execute its verdicts would, *ipso facto*, and without further discussion or delay, be recognized by all the world as an aggressor and an outlaw state.

The form of this proposal no doubt left something to be desired, but none the less it was from this source that M. Herriot took the idea on which he founded his first speech to the Assembly on September 5th, 1924. He dealt mainly with the difficulty, inherent in the whole problem of security, of determining which state is the aggressor.

"We admit," he said, "that it is an extremely intricate and perplexing task to determine which state is the aggressor . . . we earnestly hope, therefore, that one of the acts of the Fifth Assembly will be to accept the principle of arbitration, which will once again settle our difficulties, *since henceforth the aggressor will be the party which refuses arbitration.*" [1]

As things turned out, the principle of arbitration did not "settle the difficulties" which the members of the Fifth Assembly had to face, for reasons which will be later on explained. But from the moment when the Prime Minister of France, with the support of the Prime Minister of Great Britain, made the declaration which has just been quoted, it was certain that a great part of the Protocol would be devoted to the extension of the provisions of the Covenant for the peaceful settlement of international disputes.

Arbitration, Security and Disarmament, thus became the threefold foundation of the work to which the Fifth Assembly set its hand. The result is the Protocol into the meaning and effect of which it is the purpose of this book to inquire.

Before the inquiry is begun, one or two preliminary points may perhaps be dealt with. What, for example, explains the form which the Protocol has taken? In what way does it differ, if at all, from a formal treaty, such as was previously

[1] See Verbatim Record of the Assembly Debate on the Reduction of Armaments, September 4th–6th, 1924. Published by the League of Nations Union, 9*d*.

proposed by the Temporary Mixed Commission? Why does its first article impose upon the signatory states the duty "to make every effort in their power to secure the introduction into the Covenant of amendments on the lines of its provisions"? If amendments to the Covenant are needed, why were they not made forthwith, and why was the Protocol required at all? And why in any case was it called a Protocol, and what does the name imply?

To begin with the last of these questions, the word Protocol has several meanings, of which the most important is that of an auxiliary or an addition or a supplement to a treaty proper. The Geneva Protocol was intended to be a supplement to the Covenant of the League rather than a new and independent treaty. By choosing this name its authors meant to show that they were not establishing a new or rival system to that which the Covenant had set up. Although they were going beyond the Covenant, they were only carrying to their logical conclusion the principles on which the Covenant was built; while those Members of the League which accepted the Protocol forthwith would evidently have different obligations from those Members which did not, it was hoped and intended that the difference would be soon wiped out by the universal acceptance of the Protocol, and the consequent amendment of the Covenant itself. If there were no amendment of the Covenant, it was clear that confusion might easily result, for both the Covenant and the Protocol contain elaborate but differing systems for dealing with the same inter-state relations, and particularly for dealing with the settlement of disputes. On the other hand, it was impossible for the authors of the Protocol to deal with all the work before them by means of amendment to the Covenant alone, for two sufficient reasons: first, part of their purpose—for example the summoning of a Disarmament Conference at an early date—was of a transitory nature, and provisions for its achievement would be quite unsuitable for incorporation in the written constitution of the League; second, the process of amendment, as laid down in article 26 of the Covenant, is a long one; before any amendment adopted by the Assem-

bly can become effective, it requires a formal act of ratification by every state represented on the Council, and by a majority of the states which make up the Assembly as a whole. Since the League came into existence in 1920, a number of amendments have been adopted by the Assembly, but only four of them, and those the least important, have as yet come into force. It was clear, therefore, that unless the authors of the Protocol were willing to wait a period of years before they could bring their new system into force, they must find some other method of procedure than that of amendment under article 26. But they were not willing to wait; for until their system was at least potentially in force they had no *point de départ* for the Disarmament Conference which was to crown their work. And the Disarmament Conference, in the view of very many of them, was already overdue.

It is clear therefore why the second paragraph of article 1 of the Protocol provides that, as between the signatory states, the provisions of the Protocol "shall be binding as from its coming into force." The authors of the Protocol were anxious to get on: "*aboutir*" was from first to last the watchword on their lips. But it is no less clear why the first paragraph of article 1 provides that the signatory states shall make "every effort in their power to secure the introduction into the Covenant of amendments on the lines of the provisions contained" in the Protocol; why, in other words, besides bringing their work into immediate effect they added the slower method of article 26 of the Covenant as well. It has been already said that their purpose was to avoid, so far as might be, the co-existence of two conflicting systems of law governing the same inter-state relations. In the interim period after the Protocol came into force and before the amendments to the Covenant could be made, such co-existence could not be avoided; but the mere legal complication of the situation that would then exist is enough to explain, if further explanation is needed, why the authors of the Protocol proceeded as they did. For in that interim period there might, and in all probability there would, be four different classes of states whose mutual relations would

be governed by different legal rules. These classes are as follows :

1. Members of the League signatory to the Protocol.
2. Members of the League non-signatory to the Protocol.
3. Non-members of the League signatory to the Protocol.
4. Non-members of the League non-signatory to the Protocol.

Among these different classes the rules of the Protocol or the Covenant would apply in the following different ways :—

Between a Member of the League signatory to the Protocol and all other states signatory to the Protocol, whether Members of the League or not (i.e. between classes 1 and 3 above), the rules of the Protocol would apply.

Between a Member of the League signatory to the Protocol and all Members of the League non-signatory to the Protocol (i.e. between classes 1 and 2 above), the Covenant would apply, and the Protocol would be of no effect.

Between any state signatory to the Protocol, whether a Member of the League or not and all states not Members of the League and non-signatory to the Protocol (i.e. between classes 1 and 3 above on the one side, and class 4 on the other side), the provisions of article 16 of the Protocol (*q.v.* Annex V) would apply.

Between a Member of the League non-signatory to the Protocol and states not Members of the League, whether signatory to the Protocol or not (i.e. between class 2 above on the one side, and classes 3 and 4 on the other side) the provisions of article 17 of the Covenant (*q.v.* Annex VI) would apply.

Now there is nothing inherently impossible in a situation in which the relations of different classes of states are governed by different systems of legal rules. The broad principle of the situation would be this : that states which had signed the Covenant and nothing more would still live under the system of the Covenant in all respects, while states which had signed the Protocol (with or without the Covenant) would live under the system of the Protocol except in their relations with states which had signed the Covenant but not the Protocol. There is no reason to believe that

this principle would be unworkable, nor even very difficult, in practice. But of course the legal complications which it *might* involve are great. It was hoped by the leaders of the Fifth Assembly that, as the League became, in due course, universal and its Members accepted the obligations of the Protocol and brought them into force, these legal complications and divergences would disappear, and all the classes of states above distinguished would be merged into the first and governed by the single system of Covenant and Protocol combined. In the meantime they did what they could by article 1 of the Protocol to hasten this desirable result.

There is no purpose in debating at any length whether their plan was right or wrong. On the whole its advantages are plain. It makes the new system of the Protocol effective at once for states which are willing to accept it; it does not force this new system on states which are contented with the Covenant as it stands; it makes the best arrangements that can be made for bringing about the fusion of the two systems as soon as the governments are ready for the step.

One other point about the form of the Protocol must be mentioned. If it is not accepted by *all* the Members of the League, how can it impose new rights and duties on the Council and the Assembly? Will not the Members of the League who do not accept it have the right, if they so desire, to object to the exercise of these new rights and duties by the institutions which they, with the other Members of the League, collectively maintain? The answer is plain. The Protocol can *impose* no rights and duties on the institutions of the League. Under article 1 the signatories undertake that "so far as they are concerned, the Assembly and the Council . . . shall thenceforth have power to exercise all the rights and perform all the duties conferred upon them, by the Protocol." But this by itself is not enough. Before the Assembly or the Council, which act for the League of Nations as a whole, can exercise the rights and perform the duties provided for in a new and separate international agreement, they must freely and in their corporate capacity

decide respectively to do so. Once they have so decided, once they have accepted the rights and undertaken the duties in question, their decision will bind them and their successors for the future. There is no difficulty about this doctrine, as some critics of the Protocol appear to think. It has been applied in many cases when the Council of the League has undertaken tasks "conferred" upon it by the Treaty of Versailles, by the Minority Protection Treaties made by the Principal Allies in Paris, and by other international treaties drawn up or accepted by some only of the Members of the League.

Finally, it must be said that some of its critics in Great Britain appear to misunderstand the whole nature and authority, the general diplomatic standing, if the phrase may be allowed, of the instrument with which they have to deal. Just as they are inclined to say that it is hasty and ill-considered work, so they are inclined to add that it has been forced on the unwilling governments of the world by the hotheads of Geneva. They speak as if the League were an extra-national or supra-national Being over whom the governments had no control. Nothing could be more fantastically absurd. The League in its origin, in its growth and in its action, at every turn and in every circumstance, is the creation and the creature of the governments of which it is composed. The Assembly of the League is not a supra-national Parliament issuing independent and irresponsible edicts to a perplexed and startled world; it is the international organ of the fifty-five countries which are Members of the League; it is itself a meeting, and nothing less and nothing more than a meeting, of the governments of these countries in the persons, for the most part, of their responsible ministers of state. It is this inter-governmental organ not only in theory, but in fact. And never has this been so true as it was of the Fifth Assembly which drew up the Protocol. The whole initiative of the Assembly's work, the whole conception of the Protocol, the broad policy and the smallest details of its application, all came alike from the responsible ministers of the leading countries in the world. Take, for example, the opening debate of the

Assembly, from which resulted the first Resolution of September 6th—the resolution on which the whole Protocol was built. There were seventeen speakers in that debate. Four of them were Prime Ministers in power, including the Prime Ministers of Great Britain and of France. Four of them were Ministers of Foreign Affairs in power. Two others were Cabinet Ministers of the highest rank. Two were ex-Prime Ministers, two others were ex-Ministers of Foreign Affairs—all four recently in power, likely to come to power again, and speaking by instructions and in the name of their governments at home. The remaining three were the leader of the Australian Parliamentary opposition, the ruling Prince of a native Indian state, and the leading representative of the Latin American republics. What was true of the opening debate was no less true of the subsequent work of the Assembly. In the First Committee, which dealt with the legal parts of the Protocol, in the Third Committee which dealt with security and disarmament, and in all the sub-Committees which these two main Committees respectively appointed, the lead was taken and the work was done by ministers of Cabinet rank and responsible statesmen acting by instructions and on behalf of the governments in whose names they spoke.[1] The Assembly ended with the solemn acceptance of the Protocol by the delegations of forty-eight governments,

[1] The individual members of the Assembly chiefly concerned with drafting the Protocol were:
M. Benes (Czecho-Slovakia, Minister of Foreign Affairs), rapporteur to the Third Committee.
M. Politis (Greece, ex-Minister of Foreign Affairs), rapporteur to the First Committee.
Lord Parmoor (Lord President of the Council), Mr. Arthur Henderson (Home Secretary), Sir Cecil Hurst (Great Britain).
Senator Dandurand (Canada, Minister of State without Portfolio).
Sir Lyttleton Groome (Australia, Attorney-General).
M. Briand (ex-Prime Minister), M. Loucheur, M. Paul Boncour (France).
M. Salandra (ex-Prime Minister), M. Schanzer (ex-Minister of Foreign Affairs), M. Scialoja (ex-Minister of Foreign Affairs; Italy).
M. Skrzynski (Minister of Foreign Affairs; Poland).
M. Hymans (Minister of Foreign Affairs), and M. Rolin (Belgium).
Count Apponyi (ex-Prime Minister and Leader of Opposition; Hungary).
M. Kalfoff (Minister of Foreign Affairs; Bulgaria).
M. Fernandez (Brazil).
M. Villegas (Chile, ex-Prime Minister).
Viscount Ishii (ex-Minister of Foreign Affairs; Japan).

that is to say by all who were present at the final vote. To show that their vote was not a solemn masquerade of irresponsibility, it is enough to say that in the short period which has since elapsed, no less than seventeen governments have signed the Protocol, and one of them has ratified its signature.

Whatever may be thought about its merits, therefore, whatever defects it may be held to have, it is necessary to admit not only that the Protocol is the final outcome of years of patient work, but that it is the creation of the governmental will of the vast majority of the civilized states under whose rule mankind to-day exists. The wisdom of the governments is no doubt a matter of opinion; but that the governments of forty-nine states drew it up, that these governments still intend to carry it into operation, is the fundamental fact of the present situation; and no one who desires to study the Protocol with an open and impartial mind can afford for one moment to forget it.

CHAPTER III.

THE OUTLAWRY OF AGGRESSIVE WAR.

UNDER the old pre-League rules of international law (by which those governments not yet Members of the League still live) every state had an absolute and unlimited right of war. It could make war whenever it desired to do so; in making war it could override all the rights of its opponents; if it were successful it could even end an opposing state's existence by annexing its territory, acquiring its property and subjugating its people. These legal rights have all been exercised not once but often in the lifetime of men and women still alive. And however much some wars may have shocked the moral conscience of mankind, in international law no distinction of any kind was made between a just and an unjust war.

It is clear that when the statesmen of the Peace Conference began to lay down the framework of a new international organization for the community of states, with permanent political institutions and a written charter of fundamental general law, the first point that engaged their minds must have been this unrestricted right of war, for it was precisely this which caused the international chaos they were endeavouring to end. And in fact the whole foundation of the Covenant they made is the limitation of the right of war.

But to the men who made the Covenant, caution was in all things the handmaid of wisdom. War is the oldest, and, so in 1919 it seemed, the strongest of human institutions. They did not venture, therefore, to try to abolish the right of war altogether. But they did place such limit-

ations on it that they may be said to have gone a great way towards its abolition. Every Member of the League undertook *in no case* to resort to war until the dispute which threatened war had been submitted to arbitration, to the Permanent Court of International Justice, or to the Council of the League, nor for a further three months after the finding of any of these tribunals had been rendered. If the dispute were submitted to arbitration or to the Permanent Court, the verdict so arrived at was binding on the parties, but if one of the parties failed to comply with it, the other had a right of war against it; while, if both so failed, they each had a right of war against the other. If the dispute were dealt with by the Council of the League—and the Members of the League, unless bound by other treaties, were free to refuse any other tribunal—the "recommendations" of the Council were not binding. If, as it is usually but loosely phrased, these recommendations were "unanimous," if, that is to say, they were agreed to by all the Members other than the parties to the dispute, then there was no right of war against a party which complied with them. But against a party which refused to comply with them, the right of war remained; while if the recommendations were not "unanimous" they had no legal effect at all, and every Member of the League resumed full freedom to take such action as it considered "necessary for the maintenance of right and justice." There were thus under the Covenant three cases in which the right of war remained (of course in each case only after the further delay of three months for which article 12 of the Covenant provided):

1. When the Council failed to make recommendations unanimously agreed to by all its Members other than the parties to the dispute. In this case any Member of the League had a right of war.

2. When one of the parties refused to comply with an arbitral award, with a judicial verdict or with Council recommendations "unanimously" adopted, and the other party complied, the party which complied had a right of war against the party which did not.

3. When neither party complied with an arbitral award,

with a judicial verdict or with Council recommendations "unanimously" adopted, they each had a right of war against the other.

It was believed, no doubt rightly, by the authors of the Covenant that, in making the above limitations on the old unrestricted right of war, they had gone as far as the governments were willing at that time to go. They believed also they had gone far enough to render possible the disarmament for which by their eighth article they made provision. But on this second point events have proved them wrong. All the organs of the League which have been concerned in the attempt to bring article 8 into effect have found that unless the right of war were still more restricted they could make no progress. It may not have been logical—opinion as to that will differ according to the view taken of the arguments advanced in the preceding chapter [1]—but it is none the less a fact that while there was the possibility that, through no fault of its own, a government might be called upon, alone and without the support of other members of the League, to face in war an enemy perhaps stronger than itself; while the Covenant left them with this risk, the governments were not ready to give up the right to make the utmost effort for their self-defence to which their peoples would respectively consent.

The Protocol, therefore, if it were to be successful, *had* to go further than the Covenant had gone. And in fact the intention of its authors was to abolish the right of war altogether, or at least to go as near to doing it as they could. They stated this intention in their Preamble, in language as significant as it is strong: "Recognizing the solidarity of the Members of the international community" (how great a growth in international consciousness this shows, even since the days when the Covenant was adopted); "asserting that a war of aggression" (however just the cause) "constitutes a violation of this solidarity and an international crime; desirous . . . of ensuring the repression of international crimes" (that is to say, of all aggressive war) "the undersigned . . . agree as

[1] See pp. 10–13.

follows." This is the outlawry of war with a vengeance, for if no state may in any case begin it, there can be no legal war.

There follows in article 2 the positive undertaking to refrain from war which is the necessary consequence of the Preamble, and which constitutes, so far as the signatories are concerned, the effective abolition of their mutual right of war:

> "The signatory states agree in no case to resort to war either with one another or against a State which, if the occasion arises, accepts all the obligations hereinafter set out, except in case of resistance to acts of aggression or when acting in agreement with the Council or the Assembly of the League of Nations in accordance with the provisions of the Covenant and of the present Protocol."

It must be said again that the undertaking of this article is the foundation on which the whole Protocol is built. Not only was it a necessary condition to induce the governments seriously to consider the reduction of their armaments; it is also a necessary element in the general system which the Protocol creates. The abolition of the right of war which it involves is, as among the states which sign the Protocol, absolute and without exception. Resort to war is only permitted to a signatory state when it is acting "in agreement" with the League and "in accordance with the provisions of the Covenant and of the Protocol." The words "in agreement" in fact mean when it has definitely been asked by the Council or the Assembly to join in the repression of an international crime. Without such a request from the Council or the Assembly it can in no case take up arms against another signatory.[1] The operations of war, therefore, henceforward constitute either an international crime on the part of the aggressor, or a "sanction," a combined police action, against this aggressor by the remainder of the signatory states.

To this rule the right of self-defence allowed by article 2—in "resistance to acts of aggression" is not a real exception. Self-defence can no more be a violation of the

[1] Cf. *infra*, pp. 150-151.

undertaking of article 2 than self-defence is a violation of the English law against assault. And just as the right of self-defence in English law is strictly limited and defined, so will the right of self-defence under article 2 be similarly limited and defined. A state which is attacked may, of course, defend itself, since in the words of the Assembly Report attached to the Protocol, " its interests are identified with the general interest." [1] But it must equally and instantly call upon the League to intervene. Were it to continue isolated action by itself, and without the permission of the League to invade the state which had attacked it, it would itself become an aggressor, for it would no longer be acting either in self-defence or in agreement with the League.

It is also important to note that under the Covenant and the Protocol the Council and the Assembly are strictly limited as to the grounds on which they may authorize or request the application of military sanctions against a given state. They may certainly do so when this state has been " guilty of aggression." The Report alleges that they may also authorize a state to undertake war " to enforce an arbitral or judicial decision given in its favour," against a state which refuses to carry the decision out but which does not accompany its refusal by resort to war. This opinion is probably right; but if so it is a departure from the general principle of the Protocol. As will be seen later, this principle is that such awards and verdicts are binding, but that they are *not* to be enforced by arms on a state which fails in its obligations to execute them. It is fairly clear that general sanctions cannot be taken to enforce them; why then should an individual war be authorized? Under the Covenant every state had an individual right so to enforce for itself decisions given in its favour; under the Protocol this individual right is given up, and the language of paragraph 6 of article 4 does not imply that war is ever to be regarded under the Protocol as a legitimate means of securing execution. The point will be discussed further later on. In any case, such authorized wars would not in

[1] Cmd. 2273, p. 11.

any sense be private wars of the old kind. In explaining the contention to which reference has been made the Report says: "The general interest would be threatened if decisions reached by a pacific procedure could be violated with impunity," and it adds that the country resorting to war, "is not acting on its private initiative, but is in a sense the agent . . . of the community." [1]

Therefore it is plain that the abolition of the right of war, meaning the right of war "on the private initiative" of an individual state, is absolute *as among the states which sign* the Protocol. But what of the states which do not sign it? Evidently, the Protocol cannot affect *their* rights under the existing rules of international law. No treaty can impose a right or obligation on a state which does not sign it. But it may affect the obligations of the signatories as among themselves concerning their relations with non-signatory states. What does the Protocol do in this respect? There are two possible classes of non-signatory states: Members and non-Members of the League. So far as Members of the League are concerned, it is the Covenant and *not* the Protocol which prevails in the relations between them and Members of the League which have signed the Protocol.[2] This is clearly shown by the opening words of article 16:

> "The signatory states agree that in the event of a dispute between one or more of them and one or more states which have not signed the present Protocol *and are not members of the League*, such non-member states shall be invited . . . to submit . . . to the obligations . . . of the present Protocol."

States which *are* Members of the League but which have not signed the Protocol are deliberately omitted from this article, for the reason explained above, that its authors wanted to avoid even the remote possibility that the new, closer and perhaps stronger League which they were creating should come into conflict with the League that exists already. Therefore the Protocol in no way applies to the relations between signatory states and Members of the League which

[1] Cmd. 2273, p. 11.

[2] Cf. *supra*, p. 22.

are not signatory states; these relations are governed by the Covenant alone, and both signatories and non-signatories retain the limited but important right of war which under the Covenant remains. The effect of this exception on the general system of the Protocol is of course much modified by the fact that the Protocol will not come into force until it has received a wide measure of acceptance; and when it was made it was believed that all or nearly all the Members of the League would sign it.

With regard to non-signatory states which have not signed the Protocol, the case is different. The drafting of article 2 leaves something to be desired, but its effect appears to be as follows: First, the signatory states absolutely, by a voluntary self-denying ordinance, give up the right of war against such non-signatory states, if the latter accept, for the purpose of a given dispute, the obligations of the Protocol. In that case both signatories and non-signatories are on an equal footing, and neither may in any case attack the other. But if a non-signatory state refuses to accept the obligations of the Protocol, then apparently—it is here that article 2 is not so clear as it might be—the signatory state concerned resumes its liberty of action. If it is then attacked by the non-signatory state, it is entitled to the assistance of the other signatories; in other words, the non-signatory state's right of war (which under existing international law it has) is subject to the application of the sanctions of the Protocol against it. If, on the other hand, the signatory state is not attacked, it has none the less a right of war, and can, if it desires, attack the non-signatory state. It must be assumed, of course, that in this case it would not have the support of the other signatories to the Protocol. It is not clear whether in such a case as this the right of war of a signatory state which is also a Member of the League, is entirely unrestricted, or whether it is limited in some way by the Covenant. The view that is taken on this point depends on the interpretation of articles 12 and 17 of the Covenant and they are most obscure. Apparently from the language of article 2 and of the Report, the authors of the Protocol assumed that the right of war of the signatory

state would in this case be *un*restricted.[1] If so, the exception which it constitutes to the general abolition of the right of war is important, and it is unfortunate that the point was not discussed and definitely cleared up when the Protocol was adopted. It is most unlikely that this right of war would ever be exercised; but if it were, it would plainly affect the interests, and possibly the vital interests, of other signatory states; it would raise problems for which the Protocol makes no provision; and it would tend *pro tanto* to perpetuate the system of "private" war, which it is the avowed purpose of the Protocol to end.[2]

But even with the exceptions which have been explained, the Protocol goes very far towards the total abolition of the right of war. The plain purpose of its authors is to get rid of it, as soon as may be, altogether. And they wanted not only to get rid of the *right* of war, but to get rid of war itself; they wanted, in the words of the Report, "to make war impossible, to kill it, to annihilate it."[3] They were content, therefore, with no paper Act of outlawry; against the crime they outlawed they organized as "sanction" the united strength of the community of states. Thus in abolishing the right of private war, they expressly maintained by the terms of article 2 the right to make *public* war against an aggressor and on behalf of international society as a whole. They maintained too for this new kind of international action the old name of "*war*," for they did not want to create the illusion that by a single step mankind could finally destroy a chaotic but an age-long system, and forthwith enter a new heaven and earth.

By its maintenance of the right of public war, article 2 raises already one of the broad fundamental questions which all who wish to judge the Protocol must face and answer. The question is this: Is international society yet

[1] It is perhaps possible to argue that the right of war would only arise after the "arbitral" processes of the Protocol had been gone through in the absence of the non-signatory state; but it is at least doubtful if the text can be made to bear this interpretation.

[2] That this was its purpose is shown by yet another passage of the Report, which says: "Henceforth no purely private war between nations will be tolerated." Cmd. 2273, p. 9.

[3] Cmd. 2273, p. 37.

sufficiently developed to justify an attempt to organize collective sanctions analogous to the preventive and punitive functions of the police force within a civilized state? In other words, are there international interests common to all nations to be protected? Are there international standards of morality and conduct on which co-operative social action can be based? The answer must be a matter of opinion. But there are few in touch with international affairs who doubt what it should be, and the governments who made the Protocol are not among them.

CHAPTER IV.

PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES.

IT was said above that the Temporary Mixed Commission in considering the abolition of the right of war took the view that it was possible, and that it might be desirable, to abolish the right of war, without making provision at the same time for the settlement by alternative pacific means of all international disputes.

The Fifth Assembly did not share that view. It was repeatedly said throughout its discussions on the Protocol that the outlawry of war, to which they intended to proceed, would render necessary the provision of a complete system of alternative means for the settlement of every kind of international dispute. This indeed was never contested from the beginning of the Assembly to the end, and is well stated in the opening passages of the Report. "The general principle of the Protocol" is there defined as "the prohibition of aggressive war" [1] and the Report goes on to say that this "general principle . . . could not be accepted unless the pacific settlement of all international disputes without distinction were made possible." [2]

But this, though an important factor in the general conception of the Protocol, was not the main reason why from the beginning the Fifth Assembly regarded the preparation of a complete system for the pacific settlement of international disputes as the first and perhaps the most important of its tasks. The main reason was that put forward by M. Herriot in the speech which has been mentioned, when

[1] Cmd. 2273, p. 10. [2] *Ibid.*, p. 11.

he claimed that in a complete system of "arbitration" there could be found an adequate and automatic test for the determination of aggression.

In addition to this leading, though as it proved, mistaken idea, there was a further motive which induced some delegations, and particularly the British and Dominion delegations, to accept M. Herriot's view and to join in the Anglo-French resolution of September 6th upon which the Assembly's work was founded.[1] The second part of this resolution instructs the First Committee to consider the relevant articles of the Covenant and of the Statute of the Permanent Court of International Justice, with a view to establishing a system which "would strengthen the solidarity and the security of the nations of the world by settling by pacific means *all* disputes which may arise between states." The British delegations accepted this resolution partly because they, like the rest of the Assembly, believed it to be an essential preliminary to any scheme for security and disarmament, but also because they hoped that, whether or not the Assembly were successful in disarmament, further progress might nevertheless be made with the development of pacific means for the settlement of disputes. They hoped, for example, that the deliberations of the Assembly might at least lead to the general, if not to the universal acceptance of the obligatory jurisdiction of the Permanent Court of International Justice. They believed this to be in itself important because, in providing an adequate and as far as possible an obligatory alternative to war, it would render war less likely. For this reason they held that whether or not practical measures towards disarmament could immediately be taken, progress with the pacific settlement of disputes had an important bearing upon what might subsequently be possible. This general conception inspired the whole speech with which Mr. Ramsay Macdonald opened the first disarmament debate of the Assembly, and he obtained for it the agreement of the Assembly as a whole. One of their avowed purposes thus became to make such progress as might be possible towards what the Report

[1] See Annex IV.

calls "the ultimate aim pursued by the League of Nations, namely the establishment of a pacific and legal order in the relations between peoples." [1]

For these reasons, therefore, the Assembly, by the resolution of September 6th already mentioned, decided, even before they had any clear conception of the form which the result of their labours would ultimately assume, to make it the first of their tasks to fill up the gaps of the Covenant (*boucher les fissures*, as the French delegation called it) concerning the settlement of disputes. This task, of much technical complexity and of great political difficulty, the Assembly accomplished in less than five weeks.

The System of the Covenant.

Before the provisions of the Protocol on the settlement of disputes can be discussed, it is necessary to say something more of the Covenant system which exists. The limitations placed by the Covenant on the legal right of war have been already dealt with. In addition to the undertakings accepted by every Member of the League not to resort to war except in certain narrowly restricted cases, the Covenant provides that every international dispute "likely to lead to a rupture" must, at the request of any party, be brought to some international tribunal. This obligation, on which articles 12–17 of the Covenant are founded, is absolute and without exception. A dispute may, if the parties so agree for a particular case or by a general Treaty obligation, be taken either to the Permanent Court of International Justice or to a special arbitral tribunal set up for the occasion. But if there is no such agreement then the dispute must in every case come to the Council of the League, which is, so to speak, the residuary legatee for all disputes not taken by the common will of the parties to some other tribunal.

The main difference between the procedure of the Permanent Court of International Justice and that of arbitration is that the Court follows fixed rules contained in its Statute while an arbitral tribunal follows rules voluntarily accepted

[1] Cmd. 2273, p. 8.

by the parties *ad hoc* and contained in a special or general agreement to arbitrate; this agreement settles how the arbitrators shall be chosen, what their powers shall be and how the questions they must answer shall be defined. Both procedures are alike in this, that the verdict of the Court or the award of the arbitrators is binding on the parties, and under article 13 there is an obligation not to make war against any party which accepts and executes such a verdict or award. But if a verdict or award is *not* executed by any of the parties the others have a right to go to war, although not until a further delay of three months has passed. The League as a whole does not undertake to assist any party to secure by force of arms the execution of a verdict or award; but faithful execution is recognized as a matter of common concern to all its members, by the last sentence of article 13 which provides that "in the event of any failure to carry out . . . an award the Council shall propose what steps should be taken to give effect thereto." This principle is important both in itself and because the Protocol extends its application.

One assumption of the Covenant, often overlooked, is that all legal disputes, all disputes, that is to say, which can be completely settled by the application of recognized rules of law, will be dealt with either by the Court or by voluntary arbitration. Since there is no absolute obligation on Members of the League to deal with their disputes in either of these ways, the Council may, it is true, have to deal with a dispute, even if it be legal, or, as it is conveniently though unattractively called, "justiciable." But the intention of the Covenant being that it should deal only with non-justiciable disputes, its functions are arranged accordingly. It has no judicial or arbitral powers. On the contrary, its primary function is to secure, if by any means it can be done, the settlement of disputes by the common consent of the parties. The words of article 15 are these: "The Council shall endeavour to effect a settlement of the dispute"; and for this purpose it has the power to make any investigations which it may think useful, to set up committees of inquiry, to hear witnesses, to seek advisory

opinions either from the Court or from other experts on any legal points that may arise, and to conduct negotiations between the parties by any means which it thinks well calculated to secure their common acceptance of a friendly settlement. But at the end of its labours, whether it secures such a settlement by consent or not, it must report to the League at large on the facts of the dispute and on the recommendations which it thinks would provide a fair solution. If these recommendations are accepted by all the parties that, of course, is the end of the matter. If they are adopted "unanimously" by the Council and complied with by one or more of the parties, there is an obligation on all Member States, even on parties which have refused to accept the recommendations, not to go to war with parties which have complied with them. If, on the other hand, the recommendations of the Council are not "unanimous," they have no legal effect whatever and every Member of the League regains full liberty to take any action it may think necessary "for the maintenance of right and justice"; in other words it has the legal right to go to war.

It must be repeated that in this connection the word "unanimous" has a special meaning and excludes the parties to the dispute. This new principle introduced by the Covenant is an important derogation from the principle of pre-war international law that, as a result of their sovereign independence, states have a right to be judges in their own disputes. But the effect of this change in the rules of international law is limited; a Council report, if unanimous in this special sense, takes away from parties who do not accept it the right of war against parties who do, but it has no other binding force. It imposes no duty on the parties to carry out its recommendations; nor does the Covenant give the Council any power, as in the case of judicial verdicts and arbitral awards, to propose steps to secure their execution. This plainly accords with the general function of the Council in disputes, which is to act as a political rather than as an arbitral body, and as such to do rough justice, if possible by compromises mutually agreed to.

Such is the scheme of the Covenant for the peaceful settle-

ment of disputes. In five years of practical application it has worked much as its authors expected, and it has achieved a remarkable measure of success. Its strength has lain in the elasticity of its provisions, in their adaptability to every kind of circumstance and dispute, and in the wide discretion they have given to the Council. In some ways, indeed, it has been a stronger instrument than at first sight it appears, and stronger than its authors were able to expect. For example, the requirement of unanimity for decisions of the Council has not proved an obstacle to success, as many critics predicted it would. Again, experience has shown that in practice it is very difficult for one party to refuse to comply with a verdict of the Court or a report by the Council if the other party does so.

As regards justiciable disputes also the Covenant is stronger than at first sight it appears. Although, as explained above, a state has the right to refuse to submit disputes of a purely legal nature to the Court, in practice it is very difficult for any party to exercise this right. For the plain assumption of article 13, if its first and second paragraphs are read together, is that any state of good faith will be prepared to send its justiciable disputes to the Court or to arbitration, and if any party does not wish to do so, it is practically bound to show grounds why the dispute in question does not fall within the famous definition of justiciable disputes which the second paragraph contains. This would gravely embarrass any state which endeavoured in bad faith to withhold a genuinely justiciable dispute from judicial settlement.

Second, such a state has the knowledge that, even if the direct jurisdiction of the Court is avoided, its advisory opinion on any important legal point will almost certainly be taken by the Council, before whom the dispute in any case must go. It would be almost impossible for the Council to disregard a well-founded request by any party that it should exercise its power under article 14 to obtain such an opinion. In practice it has never done so; it has always sought, in nearly every case from the Court itself, advisory opinions on legal points involved in disputes which

have come before it. However much one party may resent a demand by the other for an advisory opinion, it is almost impossible for it to resist it publicly, and in fact, in the whole history of the Council's work there has hardly been a case of such resistance. But even if such resistance occurred, the Council would almost certainly overrule it, for recourse to the Court is always, for the best of reasons, an easy way out of a difficult situation, and even if the Council—an unlikely hypothesis—were divided on the point, it could as a matter of procedure and by majority vote ask the Court for an opinion.[1] This being so, it is plain that a party which desires the opinion of the Court on legal issues will almost certainly get satisfaction. Advisory opinions, to be sure, are not legally binding either on the Council or the parties. But again practice is different from theory. There has been no case where the Council showed the least desire to reject an advisory opinion rendered by the Court nor any case where the parties have declined to carry it out in full.

Thus in practice the Covenant has been a strong and satisfactory instrument in justiciable as in non-justiciable disputes. This explains why the Court already in the first years of its existence has had so much to do; most of its work has been to give advisory opinions asked for by the Council under article 14. For this reason, too, and also because the Court by its work has already acquired a great authority, the Governments were ready at the Fifth Assembly to go far beyond the formal provisions of the Covenant in developing obligatory provisions for the settlement of justiciable disputes. And in doing so, of course, they were making a less violent break with their actual practice under the Covenant than at first sight appeared.

General Principles of the Protocol concerning the Settlement of Disputes.

For the sake of clarity and at the risk of repetition, the examination of the provisions of the Protocol which relate

[1] This view is disputed by some legal authorities. The relevant arguments are too lengthy for inclusion.

to the settlement of disputes will be prefaced by a statement of the principles on which they rest. These principles are as follows :—

First : A definite solution binding upon the parties is to be found by one means or another for every international dispute of whatever kind.

Second : Therefore there must be no possibility of deadlock ; in every situation provision must be made for an obligatory method of solution.

Third : In all justiciable disputes a solution is to be obtained by decision of the Permanent Court of International Justice.

Fourth : When a dispute is not justiciable, a settlement is, in the first instance, to be sought through the mediation and conciliation of the Council.

Fifth : If the Council fails to secure a settlement, resort must be had to compulsory arbitration unless all the parties prefer a political decision by the Council.

Sixth : Every solution found in any of the ways above indicated is binding upon the parties, who undertake to execute it in good faith.

Seventh : In case any party fails to carry out a solution so arrived at the Council is to propose what practical co-operative measures the signatories should take to induce the recalcitrant state to fulfil its obligations.

These principles receive detailed application in the Protocol. The provisions concerning the Permanent Court of International Justice must be considered first, because they constitute the most important change which the Protocol involves. Such is also the logical order, since under the Protocol every dispute will be settled by the Court if any party so desires, unless it is proved to be unsuitable for such procedure.

The Jurisdiction of the Permanent Court of International Justice.

It has been said that there is in article 13 of the Covenant an assumption that all justiciable disputes, as there defined,

will be taken by Members of the League to the Court, but that this assumption is limited by the formal right of states only to act on it if they so desire. But this article has since been supplemented by article 36 of the Statute of the Court, which reads as follows:

"Members of the League . . . may . . . declare that they recognize as compulsory *ipso facto* and without special agreement . . . the jurisdiction of the Court in all or any of the classes of legal disputes concerning:

(*a*) The interpretation of a Treaty;
(*b*) Any question of International Law;
(*c*) The existence of any fact which, if established, would constitute a breach of an international obligation;
(*d*) The nature or extent of the reparation to be made for the breach of an international obligation.

". . . In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court."[1]

Article 36 of the Statute of the Court thus enables any state that so desires to pledge itself to submit disputes of these four kinds to the Court on the demand of any other party to these disputes who has given a similar pledge; if it does so, it must also accept as final the decision of the Court as to whether or not a dispute falls within any of these four kinds. Under the Protocol these pledges are no longer optional; on the contrary, article 3 imposes on all signatories the duty of making, within one month of the date on which the Protocol comes into force, the declaration to which article 36 refers. Thus, if any dispute arose between signatories to the Protocol it would on the demand of any party be submitted to the Court; if one party denied that it were justiciable, the decision of the Court on this point would be final.

The importance of this lies in the fact that between them the four classes of disputes defined in article 36 include all possible cases which are capable of settlement by the application of recognized legal rules. It therefore goes as far as it is possible to go towards establishing the com-

[1] For the full text of article 36 see Annex VI.

pulsory jurisdiction of the Court in international disputes. As international law develops, as the gaps in it are filled, and as its principles are worked out more closely in actual practice, so the part played by the Court in international disputes must constantly increase. For article 3 of the Protocol not only gives a guarantee that all justiciable disputes will in fact be taken to the Court; in doing so, it carries as far as it can be carried the juridical development of the institutions which the Covenant set up.

It is necessary to add that the obligation of article 3 of the Protocol is subject to two general limitations. The first is the right of signatory states to make treaties, either in advance or at the moment when a particular dispute arises, under which their dispute or disputes shall be dealt with, not by the procedure which the Protocol lays down, but by arbitration in accordance with other provisions to which they mutually agree. This may be done in respect of every class of dispute; it is a necessary result of the fact that the Covenant, and in consequence also the Protocol, expressly—and of course rightly—provide that nothing which they contain shall "affect the validity of international engagements such as treaties of arbitration." [1] It is indeed open to signatory states in accepting the obligatory jurisdiction of the Court to state that they do so with the reservation that they shall have the right to ask in the first instance for the consideration of their disputes by the Council of the League in accordance with the first three paragraphs of article 15 of the Covenant. This reservation in fact has been made by France; it is consistent with article 3, for it only postpones and in no way prevents obligatory submission to the Court.

The second general limitation on the obligation of article 3 is its provision that in accepting the obligatory jurisdiction of the Court signatory states do so "without prejudice" to their right "to make reservations compatible with the said clause" (that is to say article 36 of the Statute of the Court). This right raises important questions which are dealt with in the next chapter, where the extent to which

[1] See article 21 of the Covenant and article 19 of the Protocol.

it limits the value of article 3 will be discussed. It will there be argued that the right to make reservations is a useful safeguard which will not in practice affect the general result of the article. There is no reason to think that the right will be exercised in any narrow or destructive spirit by any Government which accepts the Protocol, for there was at the Fifth Assembly a universal desire to widen the scope of the compulsory jurisdiction of the Court and to bring within it all disputes with which the Court is qualified to deal.

The binding force under the Protocol of verdicts rendered by the Court, which is the same as the binding force of all the other solutions to which the methods of the Protocol may lead, will be discussed in a separate section.

Functions of the Council.

If a dispute arises and none of the parties desires to take it before the Court, and if it is not governed by a general treaty of arbitration, it will under the Protocol, as under the Covenant, come before the Council on the demand of any party. In other words the Protocol, like the Covenant, provides that if a dispute is not dealt with by judicial methods it shall, unless the parties otherwise agree, be dealt with by mediation and conciliation, for which the Council is the competent organ of the League.

As said above, the primary function of the Council is to settle non-justiciable disputes by amicable consent of all the parties. It is generally agreed that the Council has been successful in this function because it combines the quality of impartiality with immense political power. It has not always given satisfaction to all its critics; but it has a great record of settlements achieved. The Protocol therefore rightly makes no change in the nature of its function. It will still be free, as under the Covenant, to bring the parties together, to make investigations, to propose mutual concessions, and in general to seek a settlement by consent. The Protocol, in fact, makes no change in what occurs unless the Council fails in this primary duty to secure if possible a settlement by consent. But if it does so fail, then

instead of making a formal Report on the facts of the dispute and its recommendations for a settlement, it is charged by the Protocol with the duty of urging the parties to submit the dispute either to the Court or to voluntary arbitration. If the parties agree, the dispute is of course dealt with and decided either by the Court or in accordance with the terms of their agreement to arbitrate.

If, however, the parties cannot agree either to go to the Court or to voluntary arbitration, then the Protocol gives to any of them which desires arbitration the right to insist that a "committee of arbitrators" be set up and their dispute so dealt with. This is the so-called "first case" in which a state has a right under the Protocol to insist on compulsory arbitration. It may be, however, that none of the parties desire to exercise this right and if so the Council must itself take up the dispute again. If it is then able to agree on unanimous recommendations for its settlement (apart of course from the parties) these recommendations have binding force upon the parties who undertake, by paragraphs 3 and 6 of article 4, to comply with them.

The changes thus made by the Protocol in the effect of a Council report, are in a sense more logical than the provisions of the Covenant itself. The primary purpose of action by the Council, it must be repeated, is not, in its essence, to decide a conflict, but to secure agreement by negotiation. If it failed in this purpose it was, strictly speaking, illogical to give to a Council report any substantive effect at all, even that of taking away the right of war against parties who complied with it. The Covenant plan was no doubt a valuable compromise, and adequate for the limited purpose which its authors had in view. But when that purpose is widened to include the definite solution of all international disputes by decisions binding the parties, if necessary against their will, the Covenant compromise is not enough, for it might well leave a situation of deadlock. On the other hand, since the Council is a political body acting not merely by legal rules or equity, but influenced by considerations of political expediency, it would have been a sort of political tyranny, so it was argued in the Assembly Committees, to

impose Council decisions upon parties who had not specifically and in respect of their particular case given their consent thereto. But if the parties refuse judicial or arbitral methods of settlement when proposed by the Council, and so leave the dispute in the Council's hands, they are held to have consented in advance to whatever plan the Council may recommend. A unanimous report is accordingly made binding upon them;[1] in other words, it has identically the same effect as a judicial verdict or an arbitral award.

So far, this is logical and complete; but there is one more possibility of deadlock. It may be that after it has taken up the question a second time by consent of the parties, the Council cannot agree unanimously upon a settlement. What is then to happen? Some solution must be found. The Council has done everything it can first to make the parties settle by consent and then to agree itself upon what is right and just; and it has failed in both attempts. Some new and different procedure is therefore needed, and compulsory arbitration is once more the device which the Protocol adopts. But in this so-called "second case" of compulsory arbitration, it does not take place by the will of any of the parties; it is obligatory both on them and on the Council, which has an absolute duty to order the arbitration, itself to choose the arbitrators, and to define their powers. Only one thing can stop the Council carrying out this duty: an agreement between the parties to settle by private negotiation, which desirable result will of course terminate the proceedings before the League at any stage of a dispute.

It should be noted that in this second case, compulsory arbitration only occurs as a very last resort. As a result, the task of the arbitrators may be one of great difficulty, and will usually relate to some matter which both parties consider very important. On the other hand it will only take place after much delay, after the whole question has been examined and clarified by long and impartial investigation and negotiation, and when it is evident that unless

there is to be a deadlock, some solution must be found without the consent of the parties.

Nature of Compulsory Arbitration under the Protocol.

There are thus two cases, and two cases only, under the Protocol when recourse may be had to compulsory arbitration. It is necessary to examine the nature of this compulsory arbitration and to consider the probability of its use, because after the obligatory jurisdiction of the Court, it is the most important element of change which the Protocol involves. Indeed, some eminent critics believe that it is more important even than the provisions about the Court, because it blocks "loopholes" which, by its nature, the Court, whatever its powers, cannot at present fill. Compulsory arbitration, moreover, is more likely to prove a stumbling block to experts and governments than the obligatory jurisdiction of the Court.

In both the first and second cases, it is only called into play after the political methods of conciliation have failed. But though the two cases are alike in this, they differ in other ways. In the first case, the arbitration takes place only by the demand of at least one of the parties. It is therefore voluntary on one side at least. For this reason, and also because the dispute may be still at a comparatively early stage, the parties are left free by the Protocol to agree, if they can, on the method of arbitration, on the names of the Committee, on their powers, and on the procedure which they shall follow. The Council, at this stage, takes no share in the matter except to fix the time limit within which the proceedings must begin. But if the parties are not agreed before this time limit expires, the Council, to avoid deadlock, is itself to settle the points remaining in suspense. In doing so it must consult the wishes of the parties, both in choosing arbitrators—it is plainly of particular importance that, if possible, they should be acceptable to both sides—and in settling their procedure and their powers. The reason for this provision [1] is plain: the greater the pre-

[1] Art. 4, par. 2b.

liminary agreement between the parties, the greater the authority of the arbitrators and the simpler their task. It should be noted that the Protocol contains another rule which the Council must follow in selecting arbitrators; they must be chosen "from among persons who by their nationality, their personal character and their experience, appear to it to furnish the highest guarantees of competence and impartiality."[1] This rule, of course, applies equally to both cases of compulsory arbitration. One other point concerning the duties of the Council in the first case is raised by the Report. It is said that, in settling outstanding points upon which the parties may have been unable to agree, the Council shall settle the other powers of the arbitrators, but shall *not* define the question or questions which they must answer. This, according to the Report, must be left to the arbitrators themselves, who "must seek" the questions "in the claims set out by the parties."[2] This may be a good plan, and one which, in practice, the Council will adopt; but it is difficult to know upon what provision of article 4 the remark in the Report is founded.

The second case differs from the first by the fact that the arbitration will be begun, not on the demand of any of the parties, but simply because the Council has failed to reach an agreement which the parties intended and hoped that it would reach. The parties are therefore deemed to have handed over the whole matter to the Council, and the Council in consequence takes complete charge of the proceedings. The parties have no rights in the matter at all; on the contrary, the Council nominates the arbitrators and settles their powers and their procedure. It need not even consult the parties, though, of course, it has the right to do so, and, in all probability, would exercise it.

It is possible that a compulsory arbitration instituted in the circumstances of the second case might, for political reasons, be dangerous. If so, there is this safety valve, that no time limit is laid down in article 4 within which the Council must begin the arbitration, so that it could, if it desired, secure delay. Such a situation is, of course,

[1] Art. 4, par. 2b.

[2] *Vide*, Cmd. 2273, p. 16.

improbable in the extreme; and if it were likely to arise, there would be the more pressure on the Council to settle the dispute by a unanimous report.

Such being the conditions in which Committees of Arbitrators in these first and second cases of compulsory arbitration are respectively brought into being, what is the exact nature of their function?

A priori, it is evidently different from the function of a tribunal in voluntary arbitration; but in the first case it may approximate more or less closely to it. For if, in the first case, the parties agree by mutual consent upon the members of the Committee, upon their powers, upon the questions they must answer, upon the rules or procedure they must apply, there will be little distinction in practice between the position of the Committee and that of a tribunal voluntarily accepted and set up; the agreement or *compromis* between the parties will be very similar in nature to the *compromis* of a voluntary arbitration, and the arbitrators will in all respects be guided by it. In the measure to which there is such agreement between the parties, moreover, the task of the arbitrators will be easier than when there is no preliminary agreement of any kind.

It is also important to note that in the first case the parties are free to confer on a Committee of Arbitrators any powers they like, either instructing them to act at first simply as conciliators, or empowering them to settle out of hand what in their absolute discretion may seem to them right and just. It is because the Protocol allows this liberty of agreement between the parties, and allows in consequence a varied scope for the powers and procedure of Committees of Arbitration, that the authors of the Protocol did not supplement article 4 by any code of rules for the guidance of these Committees. The general advantage of elasticity is plain, but the lack of a settled code of rules may make difficulties for the Council both in the first case, if the parties do *not* come to an agreed *compromis*, and in the second case, when it has to settle everything for itself.

It is indeed this absence of a code of rules which causes doubt as to the function of a Committee of Arbitrators under the Protocol. In both the first and second cases the problem is the same. Translated into a practical form, it is this: in what terms shall the Council define the powers of the arbitrators, and on what principles shall the arbitrators proceed?

The first answer to these questions is that the word "arbitration" has in international affairs and international law a well-recognized technical sense, and that it must be given this sense in the Protocol. If there were any doubt that this is so, it would be settled by the precedent of the Covenant, where "arbitration" is used throughout in a way which permits of no other interpretation. Moreover the intention of its authors to maintain this meaning in the Protocol is clearly shown by the minutes of the First Committee and by the changes which that Committee made in M. Politis' draft Report.

This technical meaning of the word "arbitration" is defined in article 37 of the Hague Convention of 1907 for the Pacific Settlement of International Disputes as "the settlement of disputes between states by *judges* of their own choice, and *on the basis of respect for law*."[1] This being so, it follows that, so far as may be possible in any given case, a Committee of Arbitrators under the Protocol must proceed in a quasi-judicial manner, and must apply the rules and principles of international law so far as they are applicable to the dispute. This is the first and most important rule that can be laid down.

That their function is to be as strictly legal as possible is further shown by article 4, paragraph 2 (*c*), which stipulates that on the request of any party, the Committee of Arbitrators "shall through the medium of the Council request an advisory opinion upon any points of law in dispute from the Permanent Court of International Justice." This is a provision of importance, first, because it will serve as a guiding principle to arbitrators in the exercise of their functions, by indicating that their task is to apply to the

[1] The italics are mine.

utmost limit existing legal rights; and, second, because it means another extension of the power of the Court to give advisory opinions which has already been put to such profitable use.[1] Article 4, paragraph 2 (*c*), does not provide that advisory opinions so obtained must be binding on the arbitrators, because of course the legal points involved may be only a small part of the total case with which they have to deal. But there is no danger that arbitrators would override any opinion which the Court might give.

If in a dispute there are no recognized legal rules which the arbitrators can apply, or upon which they can ask the opinion of the Court, what are they to do? In such a case, there may be what, perhaps, can be called "quasi-legal" guidance for their action. There may be broad legal principles universally recognized. There may be agreements covering the points at issue which one or both of the parties have made with third parties. There may be previous arbitral decisions in similar cases. Such quasi-law, though it will not be binding upon the arbitrators, may be of great value to them. And if neither law nor "quasi-law" covers the whole ground of a dispute, as sometimes it may not, the arbitrators must then apply, to the best of their ability, the general principles of legal equity; even in so undeveloped a juridical science as that of international law, this may often provide them with a scientific guide as to the course they should pursue.

But even if there are no rules whatever of law or quasi-law or equity which the arbitrators can adopt—this may happen, though it will do so less often than is usually believed—they cannot even then refuse to give a decision upon the dispute entrusted to their charge. Even then they must make a settlement on every point at issue. Having no rules or precedents to guide them, they must decide according to their conscience what they think to be right and just; their action must accord with what they believe would be a good

[1] This provision is also important in connection with reservations to the obligatory jurisdiction of the Court, as will appear in the next chapter (see p. 66).

legal rule if the nature of the case should permit of one. This kind of decision, though sometimes it may be difficult for the arbitrators to make, is by no means unheard of in arbitration. On the contrary, both in civil law and in international disputes, arbitrators frequently make settlements of this kind. Whether the arrangement is one which is politically wise or desirable, whether the Protocol would not be a better document if it omitted the parts of article 4 which relate to compulsory arbitration, will be discussed in Chapter V. In the meantime it must merely be said that to represent such arbitral decisions under article 4 of the Protocol as wholly arbitrary is inaccurate and misleading; even in the absolutely non-justiciable disputes above discussed, they are by no means that.

Effect of Decisions, and their Enforcement.

By the system above described, the Protocol, by one method or another, provides a solution for every dispute that can arise among the signatory states, and this solution, whatever it may be, the signatories undertake to accept and execute. This is simply a logical and necessary extension of the principle of article 13 of the Covenant, under which Members of the League are already bound to comply with arbitral awards. This extension is logical, because under the Protocol the parties have a right in every case, if they care to use it, either to judicial or to arbitral procedure; it is necessary, to avoid deadlock.

Thus, if any party to a dispute does not carry out a judicial verdict, an arbitral award, or a Council recommendation, it breaks a pledge which it has given to every other signatory state. Both by this pledge mutually made and taken, and by the whole nature of the Protocol, every signatory has thus a direct interest in the fulfilment of every solution to which its processes may lead. In consequence of this common interest in fulfilment, the Protocol extends yet another principle of article 13 of the Covenant, by providing that in case of failure to carry out a verdict, an award or a recommendation, the Council "shall propose what steps should be taken to give effect thereto." Para-

graph 6 of article 4 is even more explicit than the Covenant; it expressly stipulates that, as a preliminary to "proposing steps," "the Council shall exert all its influence to secure (the) compliance" of the recalcitrant state with its obligations. The common duty of members of the community of states to secure fulfilment of impartial international verdicts and awards thus gains in emphasis and is extended to every category of dispute.

The question then arises, what "steps" the Council may propose? One principle of the Protocol on this point has been already stated; it is that solutions shall not be enforced by the "sanctions" proper for which its later articles provide. This was the thesis of the British Delegation from the beginning of the Assembly to the end, and it was accepted at every stage of the debates. It was made clear beyond all doubt in a speech by Mr. Arthur Henderson to the Third Committee:[1]

"If it should occur that such decisions are not carried out we do not propose that they should be imposed by force of arms unless the failure is accompanied by a resort to war . . . we merely propose that the provisions of article 13 of the Covenant should be extended and that the Council should propose the means by which faithful execution of an arbitral decision may be obtained. We believe that the Council, by exerting in the first place the immense moral pressure of the League as a whole, will not fail to secure the faithful execution of such decisions."

Solutions then, are not to be "imposed by force of arms." The Report again asserts[2], however, that the Council may authorize a party to a dispute to go to war to "enforce a decision given in its favour." The argument for this view is that under paragraph 6 of article 4 the power of the Council to propose "the steps required to give effect to a verdict" is general and unrestricted, as it is under the Covenant; and that since under the Covenant it is free to propose whatever measures are required to secure obedience, including war, so it must be under the Protocol, for the latter merely restates the provisions of the former.

[1] See Assembly Records—Third Committee—September 22nd, 1924.
[2] Cmd. 2273, p. 18, cf. also *supra*, p. 31.

This argument is probably correct, but even if it is, to allow resort to war except in defence against aggression appears to be a derogation from the principles of the Protocol, and a derogation which, theoretically at least, might cause embarrassment. Would resistance, for example, by the defaulting state constitute aggression, against which sanctions proper would be taken? If so, what becomes of Mr. Henderson's principle? If not, what would be the position of the other signatories to the Protocol if the state authorized to "enforce a decision in its favour" were itself defeated or even conquered by the defaulting state? These are difficult questions in theory, but of course in practice the right of the Council so to authorize war would only be used when all else had failed, and it is worth noting that, in proposing steps to give effect to decisions, the Council must act by unanimity. This is a great practical safeguard against abuse, of which indeed there is no practical danger.

The Report next goes on to say that the Council "may institute against the recalcitrant party collective sanctions of an economic and financial order." The phrase is unfortunate; the Council does not "*institute*" measures of any kind; it only proposes the measures which it believes will be effective if they are adopted by the signatory states. It is for the signatory states themselves to decide if they will carry them out, for while no doubt they have a moral obligation, they have no legal obligation to carry out any steps which the Council may propose. Further, the phrase "economic and financial sanctions" needs definition. If it means economic and financial measures which may involve the use of armed coercion (i.e. blockade) the question whether the Council can authorize armed coercion arises once again. But in practice the most stringent measure which the Council is ever likely to propose will be an economic and financial boycott, which requires no armed support of any kind. Once again, therefore, the question of the Council's "rights" is of academic interest.

No one will regret that in this matter the British delega-

tion had its way and that the Protocol does not provide that the League's solutions of disputes shall be enforced by sanctions proper. As a police instrument, war leaves much to be desired; plainly it should only be used in desperate cases. Even war by a single state—though with the authority of the Council behind it—might lead to most unfortunate results which would outweigh the advantage of enforcement. And happily there is no reason to doubt that the Council will be able by pacific measures to secure respect for the decisions of the League. No doubt unless defaulting states can be coerced by general war to execute decisions, there may thereotically be deadlock. And in practice if a state is left, as the result of litigation, with a sense of grave injustice, it may resist the execution of a decision for a considerable time. But if it does it will be subject, first, to the full "influence" of the Council; next, to the opprobrium of the world at large; next, to general diplomatic rupture with other countries, by the withdrawal of their Ministers and the dismissal of its own; next, to an economic and financial boycott. The moral and political pressure of the action of the Council and of diplomatic rupture, would be powerful in the extreme, as every one agrees who is in touch with international affairs. And if that failed there are few states in the world which could for long resist an economic and financial boycott. Those who believe in democracy will add that no democratic state is likely long to resist a decision arrived at with all the guarantees for justice which the Protocol provides. There is force, therefore, in the claim that pacific measures for the enforcement of decisions will, in the vast majority of cases, be enough.

Functions of the Assembly in the Settlement of Disputes under the Protocol.

Article 15 of the Covenant provides that any party to a dispute may transfer its consideration from the Council to the Assembly if it so requests within fourteen days after its first submission. It also provides that the Council

on its own initiative may so transfer a dispute at any time. It is generally agreed that this power of appeal to the chief forum of world opinion is a useful safeguard. It has already been used with remarkable effect. In 1921 the Albanian Government believed that in their frontier dispute with Serbia they would not get justice from the Conference of Ambassadors, to whose decision they had been virtually handed over by the Council of the League. They therefore appealed to the Assembly, which debated the whole dispute in September 1921, and advised the Council to set up a commission of inquiry to examine certain aspects of it on Albanian soil. The Council accepted this proposal, which indeed it could hardly reject; and a few weeks later the presence of this commission of inquiry in Albania greatly helped the League to secure the prompt withdrawal of Serbian troops to their own territory and thus to initiate the general reconciliation between the two countries which followed shortly after.

With such a precedent it was certain that the Members of the League would be reluctant to give up the right of appeal to the Assembly. There was some doubt at first, however, whether it was consistent with the new system of the Protocol. Those who pressed for its retention were finally successful, but only after they had made a considerable concession. This was embodied in article 6, which, in conferring on the Assembly all the powers to deal with disputes conferred on the Council by paragraphs 1–3 of article 15 of the Covenant, also provides that if a dispute is not settled by its mediation and if arbitration is in consequence demanded or required, the organization of the arbitration shall be done, not by itself, but by the Council. This arrangement is reasonable, for clearly the Council is a more suitable body than the Assembly for the executive duties involved in an arbitration. For analogous reasons the Report asserts that if the Assembly wants an advisory opinion from the Court, it must ask for it through the medium of the Council. No doubt this is correct procedure, for under article 14 of the Covenant the Council alone is given the right to ask for such opinions.

Apart from this limitation the Assembly has, under article 6, full powers to deal with disputes referred to it by any means which it thinks proper or likely to bring the parties to agreement. Like the Council, it may institute investigations, set up committees, propose compromises, and so on; rights which it is not likely to use, for the value of its intervention lies in its public debates. In order to bring its functions into accord with the general system of the Protocol, article 6 provides that if it fails to secure a settlement by consent, any party can demand an arbitration; and only if no arbitration is demanded shall it make a settlement of its own. Under the Covenant a recommendation of the Assembly has the same effect as a "unanimous" recommendation of the Council if it is agreed to by all the Members of the Council and by a majority of the other Members of the League, exclusive, of course, of the parties to the dispute. The Protocol adopts the same device, and provides that an Assembly settlement so supported shall bind the parties. If the Assembly cannot secure this necessary majority, arbitration is compulsory, as in the second case under the procedure of the Council.

The above plan fully maintains the safeguard of appeal to the Assembly, which of course will also supervise the way in which the Council carries out the executive functions entrusted to it.

How the Protocol changes the Covenant.

The system for the settlement of disputes which the Protocol thus sets up, gives any of the parties the right to take a justiciable dispute to the Court, thus removing the ultimate right which Members of the League had under the Covenant to refuse its jurisdiction; it leaves to the Council, without any diminution, the full powers which it has under the Covenant, to settle non-justiciable disputes by mutual consent; it enables the Council to carry on its negotiations to this end without the ultimate threat of war, which under the Covenant still remained;[1] it creates

[1] Cf. *infra*, p. 86 *seqq.*

as a last resort, when neither Court nor Council have found a settlement, the right to compulsory arbitration, thus providing an escape from deadlock and an alternative to war (both of them possible under the Covenant as it stands); it creates a new obligation, under the Covenant applicable only to judicial verdicts and arbitral awards, to accept the settlement arrived at by *any* of its methods of procedure; and it sets up effective guarantees that all its obligations will in practice be observed.

It thus introduces into the Covenant changes which may be classified broadly as changes of method and changes of effect; changes of the methods by which the settlement of disputes is sought for, and changes in the effect of the solutions which they provide. The changes of method are two: the extension of the compulsory jurisdiction of the Court and the creation of a right, in certain situations that may arise, to demand compulsory arbitration. Although definite changes, they are nevertheless only extensions or more logical applications of principles which the Covenant already contains. The changes of effect are the abolition of the ultimate right of war and an obligation to accept as binding the decisions arrived at by any of the permitted processes. They are a necessary result of the changes of method, and, again like them, they are an extension of, rather than a breach with, the Covenant itself. They simply carry to their logical conclusion the limitation of the right of war and the obligation to submit disputes to impartial judgment already contained in the Covenant, by applying them to new situations to which under the Covenant they did not apply. Whether these extensions of the Covenant are improvements or not is a matter of opinion. In politics not everything that is logical is wise. Opinion will vary with the view that is taken of the ideal for which the governments at the Fifth Assembly were consciously striving. There are some to whom it still seems utopian to hope for " the establishment of a pacific and legal order in the relations between peoples."[1]

[1] *Vide* the Report, Cmd. 2273, p. 8.

The Importance of "Arbitration" in the System of the Protocol.

In any case, whether the changes which the Protocol makes in existing means for the pacific settlement of disputes are an improvement or not, their importance in its general system is undoubted. They are indeed not so important as their authors at first intended, for "arbitration," as has been said, does not provide the test of aggression of which they were in search. But they are none the less an integral and valuable part of the Protocol system, and it was only because they were inserted that many of the States at the Fifth Assembly accepted its other obligations for sanctions and disarmament. The attitude of these states was due to two reasons of broad political importance.

The first reason was that the new provisions for compulsory pacific settlement removed their fears, expressed at earlier Assemblies and in the Temporary Mixed Commission, that the sanctions might be used by the Council in error to support a state which was in reality guilty of aggression; for by enabling any state to oblige its potential enemies to submit their case to compulsory settlement of one sort or another it obviated the danger that they could carry on unchecked a policy of provocation or injustice. It thus established moral presumptions which will greatly aid the Council in determining which party to any war has been the aggressor.[1]

The second reason was that a complete system of compulsory settlement of disputes makes war less likely and thus mitigates the gravity of the other obligations which signatories of the Protocol undertake. It makes war less likely in various ways, direct and indirect. The mere effect of the abolition of the right of war; the mere fact that any act of war is recognized as an international crime, must in itself be a great restraint on a government aggressively inclined. Further, the fact that any state of good faith can be relatively certain, in every case, of securing both recognition and execution of its legal rights or im-

partial arbitration of its non-justiciable claims removes what has hitherto been often thought to be the only just cause for war and thus makes resort to war more patently a crime. This may be especially important in a case of non-justiciable claims, for it may be vastly easier in such a case for a government to accept an adverse decision from impartial arbitrators than from a political body, even from such a political body as the Council of the League. It will be still easier to accept it when, as under the Protocol, there is no right of refusal, for that in itself may enable a government to resist a hostile public opinion in its own country against which otherwise it might be powerless. An instructive illustration of this point occurred in the Vilna dispute between Poland and Lithuania in 1921. The Lithuanian government desired to accept the solution which the Council unanimously proposed—a solution which would have made Vilna the capital of their country; but the passions of the Lithuanian people and parliament had been aroused, and they compelled the government to refuse. Had the Council's solution been the result of arbitration and had the Lithuanians been under an obligation to accept it, there can be little doubt that it would have settled the Vilna question once for all. That is a special illustration of a general truth. A long history of voluntary arbitration has shown that arbitral awards, however unsatisfactory to some of the parties they may be, are almost invariably carried out. They are carried out because both governments and peoples recognize that in their prompt and loyal fulfilment of such awards the national honour is involved. Under arbitration, therefore, the appeal to national honour is a factor, not for war as it has been so often in the past, but for peace; it becomes an actual source of strength to those elements of moderate opinion which are willing to accept an impartial and reasonable solution.

Last, but not least, the system of the Protocol makes war less likely by aiding the growth of international law. By extending the jurisdiction of the Court and by increasing its work, the Protocol will bring the community of states

so much the closer to the ideal where the law provides a solution for every dispute which can arise between Governments, and where in consequence resort to force will be as universally condemned as violent crime is in a civilized nation of to-day.

If these contentions are accepted, it is fair to conclude from them, as many members of the Fifth Assembly did, that even if it stood alone this part of the Protocol, by establishing pacific and demonstrably just methods for the settlement of all disputes, by providing in every case an acid test for the motives of the governments concerned, and not least by securing great delay for reflection before a final verdict is returned, would do much to prevent war, except when it was the result of deliberate and long prepared aggression.[1] Many people who argued thus desired to bring articles 3–6 into force whatever might or might not be done about security and disarmament. But it was decided that they must stand or fall with the system as a whole. In that system they hold a great place, for they give guarantees, and very real guarantees, both to those states who fear unscrupulous attack and to those states who hesitate to bind themselves to apply military sanctions in circumstances which may threaten their own national safety.

[1] This argument is of course open to the objection that, by stabilizing the existing status quo, the Protocol endangers peace. *Vide* Chapter XI, *infra*.

CHAPTER V.

LIMITATIONS UPON THE APPLICATION OF THE PROTOCOL IN THE SETTLEMENT OF INTERNATIONAL DISPUTES. DOMESTIC JURISDICTION. OUGHT ARBITRATION OF NON-JUSTICIABLE DISPUTES TO BE COMPULSORY?

It has been said repeatedly that the Protocol system for the settlement of international disputes is comprehensive and complete, and that in its completeness lies what its authors thought its merit. Yet in fact the principles above described are subject to one important reservation and to other alleged reservations and limitations. These reservations, real and alleged, and their effect on the system of the Protocol, must therefore be examined.

The Right to make Reservations concerning the Compulsory Jurisdiction of the Permanent Court of International Justice.

It was said in Chapter IV that in accepting by article 3 the obligatory jurisdiction of the Court in justiciable disputes, the signatory states do so "without prejudice to the right of any state . . . to make reservations compatible with" article 36 of the Statute of the Court.

This is an indisputable limitation upon the application of the principles of the Protocol, and, since the obligatory jurisdiction of the Court holds an important place in its system, it is necessary to know what reservations are "compatible with" article 36.

The article itself contains some specific provisions on the point. Its last paragraph but one runs as follows:

"The declaration referred to above may be made unconditionally or on condition—(1) of reciprocity on the part of several or certain members or states, or (2) for a certain time." [1]

Oddly enough the two conditions or reservations thus specifically permitted by article 36, namely, that obligatory jurisdiction may be accepted by a signatory on condition that certain other states also accept it, and that it may be accepted only for a certain limited time, are evidently *not* permitted under the system of the Protocol. For these conditions of reciprocity and of time limit both evidently result from the fact that under article 36 as it stands acceptance of the Court's obligatory jurisdiction is optional. But once that acceptance ceases to be optional and becomes obligatory, as by article 3 it does, it is clearly impossible that reservations should be allowed which would either make acceptance dependent on similar acceptance by other states, or which would enable a state to limit its acceptance for a certain specific period of time. Thus Great Britain could not make acceptance conditional on acceptance by the U.S.A., if the latter did not sign the Protocol; and the French reserve limiting her acceptance to fifteen years will lose effect when the Protocol comes into force. There is indeed under the Protocol only one possible reservation of this kind: a state *may* declare when it formally accepts the Court's obligatory jurisdiction that it only does so for the period during which the Protocol itself is in force. This it plainly has the right to do, for with the Protocol itself will cease the obligation of its article 3; and incidentally unless it exercises this right to make such a reserve it will, as the Report points out, subsequently be bound by the Court's obligatory jurisdiction, even if the Protocol itself should lapse.

The other kind of reservation compatible with article 36 relates to the classes of disputes concerning which the jurisdiction of the Court is accepted as obligatory. The second paragraph of article 36 says that states may so accept it in respect of

[1] For the complete text of article 36 see Annex VII, *infra*.

"all *or any* of the classes of legal disputes concerning, (*a*) the interpretation of a treaty; (*b*) any question of international law; (*c*) the existence of any fact which if established would constitute a breach of an international obligation; (*d*) the nature or extent of the reparation to be made for the breach of an international obligation."

It is thus clear that a state in accepting the obligatory jurisdiction of the Court need only accept it in respect of some and not all of the classes of disputes enumerated in sub-paragraphs (*a*) to (*d*); in other words, it may *except* any (though not all) of these four classes.

If the signatories to the Protocol made full use of this right of reservation they might exclude from the compulsory jurisdiction of the Court almost all justiciable disputes, and so reduce article 36 to nonsense. Happily there are grounds for holding that that is only in theory a danger. In fact, the obligatory jurisdiction of the Court has already, even before the Protocol has come into force, been voluntarily accepted [1] by twenty countries, including France, and none of them has made a single reservation excluding any of these classes of dispute. Although some delegates at the Fifth Assembly talked about the right to exclude disputes relating to political treaties and treaties of peace (which explains the special reference to these classes of treaties in the Report), it is notable that the French were not among them and that France immediately afterwards accepted the Optional Clause without any such reserve.

There is, moreover, a substantial safeguard that this power of reservation will not be abused. Under the Protocol any dispute which does not go before the Court must go before the Council, where in due course any party can insist upon an arbitration; when the arbitrators meet the same party can by its sole demand compel them to refer to the Court for advisory opinion any legal points which it holds to be relevant to its case. It is true that under paragraph 2 (*c*) of article 4 the Court's opinion, when obtained, is not binding on the arbitrators. But in practice no doubt the arbitrators would on legal points

[1] By signature of the Optional Clause referred to in Chapter IV above.

adopt as their own any opinion given by the Court, and if they did so *the parties could not object.* Thus, any state which makes a reservation excluding from the compulsory jurisdiction of the Court any class or classes of justiciable disputes must reckon with the certainty that if it is involved in a dispute which falls within the excluded classes, any other party will, under the Protocol, be able to insist first on arbitration and then on the Court's advisory opinion. If the dispute is genuinely justiciable in the sense that it can be wholly settled by the application of rules of law it is a virtual certainty that the Court's opinion will be decisive. No state therefore can have much hope that by making the reservations allowed by article 3 it will in fact withdraw legal questions from settlement on purely legal grounds. It is clear that this fact will much diminish both the motive for reserving classes of disputes and the effect of such reserves if they be made.

It may, therefore, be fairly claimed that the power to make reservations in accepting the compulsory jurisdiction of the Court is less important, even in theory, than at first sight appears. In practice it may well remain almost unused. For it must be remembered that the vast majority of the governments of the world, with the active support of their peoples, desire, and are indeed determined, to widen the scope of the compulsory jurisdiction of the Court to the greatest possible extent, and their desire is fast becoming one of those moral forces which in international politics, as in national politics, are of higher importance than merely legal rights.

Liberty of Action of the British Fleet.

The strength of the above argument is increased by a consideration of the circumstances which led to the insertion of the power of reservation into article 3. Why was this express power put in? It was not in fact necessary. Without it the situation would have been identically the same; the power already contained in article 36 of the Statute of the Court must have remained intact, unless the Assembly had attempted to alter the article; and this it

would certainly not have done, for the task would have been arduous, difficult and unprofitable. The insertion was made because there was one government at the Assembly —the British—which wanted to leave no shadow of doubt about the matter. The compulsory jurisdiction of the Court affected what they held to be a vital Imperial interest. For this reason the British Delegation raised the question of reservations, led the debates on the subject, and by their final acceptance of article 3 completed the agreement that was come to. No one else at the Assembly expressed more than a passing interest in the subject. The French, hitherto so anxious to keep the treaties of peace "intangible" even to the point of maintaining that the League of Nations could in no way be concerned in their interpretation or application, not only did not raise the point themselves, but only took an academic part in the discussion, and, as already said, shortly afterwards accepted the compulsory jurisdiction of the Court without any reservation of this kind. It is therefore plain that in estimating the significance of the right of reservation and the likelihood of its use the attitude and contentions of the British Delegates are of much importance.

The British argument was this. They urged that if Great Britain accepted the compulsory jurisdiction of the Court for all the legal questions enumerated in article 36 it would be bound to submit to the Court any dispute falling within sub-paragraph (*b*), that is to say "any question of international law." But international law included the law of war, and in particular (for the present purpose it is what matters) the law of war at sea. The law of war at sea is in fact unsettled. Great Britain has always held one view, the so-called Anglo-Saxon view, about its rules; a view which, though she has always acted on it, has not been generally accepted, and which in all probability would not be applied by the majority of the Permanent Court, most of whose members come from countries where these Anglo-Saxon doctrines are disputed. Yet, if Great Britain accepted the compulsory jurisdiction of the Court without reservation, it might—so ran the

British argument—be possible for an enemy state against whom we were engaged in naval measures to deny the legality of these measures, and to insist that the question be referred for decision to the Court. In such a case the Court might possibly agree that the law of war at sea was in fact unsettled, and it might on that ground refuse to deal with the dispute, as under the last paragraph of article 36 it would be entitled, if not bound, to do. But it is also at least possible that the judges might take a different view; and that, applying rules which Great Britain has never recognized as binding, they might by majority decide against the validity of her naval measures. This possibility the British Government were not prepared to face, for it has always been the first postulate of British policy that if we are engaged in naval operations, we must have full liberty for our fleet to act on the rules which we accept.

The problem would of course be further altered by the Protocol. Under its system we could only be engaged in naval operations in one of two ways, either when we were ourselves aggressors, or when we were acting on behalf of the League for the suppression of some other aggressor.

The first of these hypotheses the British delegates would not even discuss. They held it as inconceivable that the British Empire should ever go to war in violation of the Covenant and the Protocol; and therefore they did not ask for exemption in that contingency from the compulsory jurisdiction of the Court. Perhaps they also thought that we would in that case already have broken so many international undertakings that the question of compulsory jurisdiction would have lost its meaning!

It was with the second hypothesis that the British Delegates were concerned. If, they argued, we were engaged in operations against an aggressor state "in agreement with the Council of the League," it would be fantastic for the aggressor, or even for a neutral which had not signed the Protocol, to be free to summon the British Government before the Court, and thus to fetter the liberty of the British fleet while it was acting in the common interest and on behalf of international society as a whole. They there-

fore informed the Assembly that the British Government desired to make a reservation to the effect that it would not accept the compulsory jurisdiction of the Court in any questions or disputes arising out of warlike measures undertaken in agreement with the Council. This was the sole and only reservation which the British Government would make, but to its frank acceptance by other countries it attached importance. For this reason the British delegates proposed, and the rest of the Assembly willingly accepted, the express right of reservation which appears in article 3.

If it stood alone, however, this proposed British reservation would not secure, under the Procotol, the full liberty of the fleet; for it would be subject to the provisions explained above, that a justiciable although reserved dispute must nevertheless be submitted, on the demand of the other party, first to the Council, then to arbitration, and then to the advisory opinion of the Court. It is absurd to imagine that the Council would admit a complaint from a state against which collective naval sanctions were being taken. But the British Government were prepared to take no risks. They therefore dealt with even this unlikely supposition by securing the insertion of paragraph 7 of article 4, which stipulates that "the provisions of the present article" (that is to say, the right or duty of compulsory arbitration) "do not apply to the settlement of disputes which arise as the result of measures of war, taken by one or more signatory states in agreement with the Council or the Assembly." The effect of this, taken together with the British reservation, would be to exclude altogether from the scope of the Protocol any question or dispute whatever which might arise from military or naval operations.

The British Delegation thus achieved, and achieved completely, the purpose which they had in view. No argument such as was brought with much force against the Declaration of London in 1909, can now be brought against the Protocol. For the Protocol would leave the Fleet complete freedom to apply in any naval measures

which the Government may undertake, those rules, and only those rules which it accepts; and moreover it secures for this freedom the express recognition of the remainder of the world. There are good grounds for holding that this is reasonable and satisfactory; for, under the Protocol, the freedom of the British fleet would be not only a vital British interest, but an international interest as well.

On the other hand, since the proposed British reservation is only what has been described, and since paragraph 7 of article 4 only excludes questions arising out of the laws of war, neither the one nor the other in any way diminishes the value of the new system which the Protocol sets up for the settlement of disputes. The purpose of the Protocol is not to regulate the results of war, nor to determine the minor effects of the rules under which it is conducted; it is to prevent war altogether by providing, so far as possible, a legal, and, in any case, an impartial and binding solution for every dispute that may arise. The British reservation will in no way compromise this purpose. There is justice, therefore, in the claim made by Mr. Arthur Henderson to the Third Committee when he said that the proposed British reservations

> " do not appear to us in any way to limit the value of what we are doing to-day. No one desires that the Permanent Court should become a body for controlling military operations. . . . We believe, therefore, that, in safeguarding the liberty of action of the British Fleet—which, above all things, it is necessary for us to safeguard—we are not acting contrary to the general interests of the nations of the world." [1]

Indeed it is no matter for regret that the Court and the Council are not expected to apply the laws of war. The laws of war, whatever service they may have rendered in the past, whatever utility they may still have for the future, are nevertheless in the nature of an anachronism, when the right of war itself has been abolished, as, by the Protocol, it is. There is a clear advantage in the fact that the associated governments of the world should make it plain that, in their view, the function of the Court is

[1] Speech to the Third Committee, September 22, 1924.

to apply and to build up the international law of peace. The advantage is not diminished by the fact that there has, in recent months, been some discussion of proposals to restore and codify the laws of war.[1]

The considerations above advanced lead therefore to the conclusions that the proposed British reservation in no way conflicts with the principles or with the true object of the Protocol; that its purpose is merely to safeguard a special, legitimate and, indeed, in a real sense, an international interest; and that it may even be advantageous in the future development of international society. It is clear that these conclusions only strengthen the grounds for the view put forward above, that it is improbable that any considerable or undesirable reservations to the obligatory jurisdiction of the Court will be made under the power to reserve which article 3 allows.

Other Limitations upon the Application of the System of the Protocol.

Two other limitations on the application of the system of the Protocol for the settlement of disputes are mentioned in the Report [2] and have caused some comment by various critics.

The first of these relates to disputes which have already been dealt with, before the Protocol comes into effect, by the Council of the League. Paragraph 5 of article 4 provides that, "in no case may a solution, upon which there has already been a unanimous recommendation of the Council, accepted by one of the parties concerned, be again called in question." This limitation is clearly reasonable. When, in the disputes with which it has already dealt, or with which it will have dealt before the Protocol

[1] In view of recent attempts made, particularly at a conference at the Hague last year, to draw up rules of law for the conduct of warfare in the air, it is worth noting that the terms of article 7, paragraph 4 would free the aircraft of states operating in agreement with the Council of the League from any such rules which they have not expressly undertaken to observe, while it would, in any case, leave them sole judges of their action. Since the part which aircraft plays in warfare is continually increasing, this might well be of importance if there were ever to be an application of military sanctions.

[2] Cmd. 2273, p. 19.

comes into force, the Council has adopted a " unanimous " report, and that report has been accepted by one or more of the parties, the Council has, in a real sense, established the respective rights of the different states concerned. It is, moreover, at least probable that if one or more of the parties have accepted the report, the rights so established have been applied and acted upon in many different ways. This in fact has happened in every dispute in which any of the parties have accepted the Council's finding up to the present time. Even in cases where these findings have, at first, been most resented by some of the states concerned—for example, in the settlement of the disputed frontier between Poland and Germany in Upper Silesia—a great fabric of new rights and relations has been built up on the basis of the recommendations which the Council made. It would be wrong in principle that these positive results, accepted by the parties and by the rest of the world, should now be upset by the application of a new system embodying an ultimate right of compulsory arbitration which when the settlements were made did not exist. There is also the important practical consideration that any attempt by the use of this new right to destroy or reverse the work of the Council would inevitably have a damaging effect, and an effect contrary to the public interest, on the prestige and authority of the Council. Paragraph 5 of article 4, therefore, which is purely retrospective in its operation, is thus a reasonable and, indeed, a necessary limitation on the application of the new system, and one which in no way affects its value for the future.

The other so-called limitation on the application of the Protocol system, which is mentioned in the Report, is even more obviously right than that which has just been discussed. It is, indeed, so obviously right that neither the First nor the Third Committee considered that it required any express provision in the Protocol itself. It was therefore merely mentioned in the Report, in the following terms :

" There is a third class of disputes, to which the new system of pacific settlement can also not be applied. These are the

disputes which aim at revising treaties and international acts in force, or which seek to jeopardize the existing territorial integrity of existing states."[1]

This simple statement of an obvious truth has caused so much misunderstanding among those who warmly favour the general principles of the Protocol, that some explanation must be made. The misunderstanding has in part arisen from the unfortunate way in which the subject is first introduced. Before using the correct language which has just been quoted, the Report says that these disputes are "cases in which the claimant must be non-suited, the claim being one which has to be rejected *in limine* by the Council, Permanent Court of International Justice, or the arbitrators, as the case may be."[2] This statement is perfectly true, so far as the Court or arbitrators are concerned. The task of either body is to apply legal rights in their integrity, wherever such rights exist and when any party demands their application. And in cases which aim at revision there are, *ex hypothesi*, legal rights, the whole purpose of the claimant's suit being to change them. No court of law and no arbitrators could undertake or could be expected to undertake, unless they were enabled to do so by the express consent of all the parties, to override or even to alter existing legal rules or rights, more especially when such rights are embodied in contracts of such sanctity as international treaties, or when they produce effects so vastly important as national frontiers. The proposition of the Report, if clearly stated, is irresistible. Arbitral like legal tribunals are established to settle disputes, in the words of the Hague Convention of 1907, "on the basis of respect for law"; that is to say, to interpret and apply legal rights, not to revise or modify them. Revision is a political function, to be undertaken by political institutions and by political methods appropriate for securing the consent of the parties.

But one such political method, and perhaps the most important, is the method of conciliation by the Council in accordance with paragraphs 1–3 of article 15 of the

[1] Cmd. 2273, p. 19. [2] *Ibid.*

Covenant; and this method of dealing with disputes which "aim at revision" still remains open to the claimant parties under the Protocol. It is unfortunate, therefore, that the Report should say that in such disputes the claim must be rejected *in limine* by the Council. So long as the Council confines itself to its proper function under these paragraphs of article 15, that is to say, to seeking by conciliation a settlement by the common consent of the parties, it can deal with disputes which aim at revision, just as it can deal with any others. If it goes beyond this it will encroach upon the sphere of the Assembly, which by article 19 of the Covenant is alone competent to "advise" the revision of treaties; but so far it can certainly go. It is only the methods of the "new system," that is to say, compulsory arbitration and compulsory reference to the Court, which cannot be applied to such disputes. And when it is said that these methods cannot be applied, what is meant is simply this—that in dealing with such a case the Court or the arbitrators must limit themselves to defining existing legal rights.

It should be added that the above argument does not hold in cases where the contention of the claimant party is that, for reasons generally recognized as of legal value, a treaty or a legal right has become obsolete. There is a well-known though vague and unsatisfactory doctrine of international law, much discussed in some books on the subject, known as the doctrine of *rebus sic stantibus*, under which publicists have often claimed that certain treaties or legal rules have, as the result of changes in international conditions, become obsolete and therefore lost their binding force. The Court will have a most difficult task if and when it has to adjudicate on claims of this nature; but that it will have the right, and, indeed, the duty under the Protocol to take them into consideration, cannot be disputed. Nor does this fact affect the validity of the argument above about disputes which "aim at revision" of existing rights. The Court may decide whether rights are "alive" or not; but if they are alive, it must apply them.

It is believed by some critics that this so-called limitation

on the compulsory jurisdiction of the Court, and on the use of compulsory arbitration under the Protocol, is a serious drawback which will result in dangerously stereotyping the existing *status quo*. The general contention that the Protocol goes too far in stereotyping the *status quo* will be dealt with later on, when the question of the provision of political machinery for the revision of legal rights and of the *status quo* will be discussed. For the moment, it must suffice to say that this special version of the general contention, in so far as it relates to compulsory arbitral and judicial procedure, cannot be consistently put forward by anyone who believes in the compulsory settlement of justiciable disputes between nations by a court of law, or in the sanctity of international treaty obligations. No progress can be made towards the ultimate ideal of "a pacific and legal order in the relations between peoples" if, at the outset, the tribunals established are to disregard the legal rights of the parties who bring their suits before them.

The above argument may be supported by the following statement from a very high authority, Sir Frederick Pollock. Writing to *The Times* on November 19, 1924, concerning a complaint against the statement made in the Report that the new methods of the Protocol could not be applied to the revision of treaties, he says that this complaint

"appears to involve a confusion between the interpretation of treaties (or any other binding agreement) and the revision of them in whole or in part. Interpretation of a document is a judicial function, amendment is not. A court or arbitral tribunal construing an agreement may control particular expressions by the general sense and purpose of the context. It may correct obvious verbal slips; it may even hold that an agreement, or some part of it, has become inapplicable in unexpected circumstances which the parties cannot have contemplated (this is the doctrine of 'frustration' familiar in our courts of late years); but in matters of substance it cannot amend anything in the text, much less dictate a revised version of the whole.

"Agreements can be revised only by substituting a new agreement. The parties can, if they choose, delegate the

framing of the amended instrument to skilled persons whom they trust, such as . . . commissioners appointed by the League of Nations. Moreover, article 19 of the Covenant empowers the Assembly to suggest a revision of treaties, if thought fit. The Protocol . . . in no way affects this article, and the conciliatory provisions of the Protocol . . . will, of course, be applicable to disputes not suitable for judicial treatment. The comment in the Report only recognizes what no lawyer needs to be told—that proposals for the revision, as distinct from the construction, of existing agreements cannot be dealt with in the way of legal argument and decision. All other methods of settling disputes (often preferable, even when the dispute, though justiciable, is not reducable to neat legal points) are left open. I fail to see what more can be reasonably desired."

Are The Provisions of the Protocol Concerning Domestic Jurisdiction A limitation on the Application of its General System ?

There is a sense in which it will probably always be true to say that the international community of states rests on the sovereignty of its Members. There is a sphere of action within which the discretion of these Members is absolute, within which their sovereign rights to do as they like in their respective relations with their own citizens, or upon their respective territories, is unlimited by any legal rules, and concerning which, therefore, neither any other state nor international society as a whole has any legal right of intervention. It is one of the primary purposes of the system of international law to define this sphere of action, and to establish, by clear and well-recognized rules, what classes of rights do and do not fall within it. For example, international law lays down that a state has absolute discretion to determine what foreign citizens, if any, shall be admitted to its territory, and on what conditions ; but that in its treatment of such foreign citizens, once it has admitted them, it must conform to certain principles. The sphere of unlimited discretion thus defined by international law is now generally spoken of as the " domestic jurisdiction of states."

It was a cardinal principle of the Covenant that the League of Nations should not in any way interfere with the

exercise of these rights of domestic jurisdiction by individual states. For this reason paragraph 8 of article 15 of the Covenant provides that if a dispute is claimed by one of the parties, and is found by the Council, " to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement." Article 5 of the Protocol stipulates that this provision of the Covenant shall continue to apply; but it modifies its application in conformity with the new system which the Protocol sets up. It thus provides that if recourse is had to compulsory arbitration, and one party claims that the dispute arises out of a matter solely within its domestic jurisdiction, that party has the right to demand the opinion of the Court upon its claim; and this opinion, if it upholds the claim, must bind the arbitrators, who " shall confine themselves to so declaring in their award."

It is sometimes said that this is a limitation on the application of the principles of the Protocol, and that it withdraws yet another class of dispute from the operation of the beneficent principle of compulsory arbitration. This argument implies a misunderstanding of the nature of the articles in question. Article 5 is nothing but a rigid application of the principle of the Protocol that all justiciable disputes shall, on the demand of any party, be referred to the Court, whose decision thereupon shall be final. Questions as to whether certain rights fall within the domestic jurisdiction of a state are justiciable questions, for the reason that the answers to them can be found in the rules of international law. Under the Protocol, therefore, any party can secure from the Court a final and binding decision on its legal rights of domestic jurisdiction. Under the Covenant such decisions, unless all the parties voluntarily agreed to go before the Court, could only be given by the Council *if unanimously agreed.* The Protocol thus renders more secure the position of Members of the League, for example the British Dominions, which attach great importance to the integral maintenance of their admitted and exclusive rights in matters such as the control of immi-

gration, which, by existing international law, indisputably fall within their domestic jurisdiction.

It is, indeed, a mystery why those who lead opinion in Great Britain and the Dominions have not yet remarked how this new provision of the Protocol would operate in their favour, and improve their present position in these important and delicate matters. They have, no doubt, generally misunderstood paragraph 3 of article 5, and the meaning of its reference to article 11 of the Covenant. This paragraph, which was added to the original draft of the article as part of the famous Japanese amendments, provides that if a dispute is held by the Court or by the Council to be a matter which is solely within the domestic jurisdiction of a state, "this decision shall not prevent consideration of the situation by the Council or by the Assembly under article 11 of the Covenant." And since under article 11 the League is empowered to take "any action that may be deemed wise and effectual to safeguard the peace of nations," it is often said that this paragraph would empower the Council to take up a dispute about a question of domestic jurisdiction even if it had already been recognized as such by the Court or by an arbitral tribunal, and would authorize it to revise the decision so arrived at and to impose a new solution of its own based on what it holds to be the merits of the case. This is, of course, a total misconception. Under article 11 of the Covenant the Council cannot *impose* anything on anybody. A matter dealt with under article 11 is not dealt with as a dispute, and the Council therefore has not even a right to make "recommendations" without the consent of the parties; for the parties must sit as Members, and their votes must be counted when unanimity is reckoned. Its function is purely political, by discussion and negotiation to prevent the outbreak of war and, if it can, to remove the cause of discord. As the Report rightly says, the third paragraph of article 5 "does not confer new powers or functions on either the Council or the Assembly. Both these organs of the League simply retain the powers now conferred upon them by the Covenant."[1] The Council cannot, therefore, revise

[1] *Vide* Cmd. 2273, p. 21.

a verdict given by any judicial or arbitral tribunal, nor do more than endeavour by its good offices to prevent hostilities. To this no one in his senses could object.

But the critics have some excuse for misunderstanding the meaning of this third paragraph, for a further passage which occurs in the Report is quite misleading. Having given a correct account of the action which the Council can take under article 11, the Report goes on to say: "The reference which has been made to article 11 of the Covenant holds good only in the eventuality contemplated in article 15, paragraph 8, of the Covenant. It is obvious that when a unanimous decision of the Council, or an arbitral award has been given upon the substance of the dispute, that dispute is finally settled, and cannot again be brought either directly or indirectly under discussion. Article 11 of the Covenant does not deal with situations which are covered by rules of law capable of application by a judge. It applies only to cases which are not yet regulated by international law. Consequently, it demonstrates the existence of loopholes in the law." The apparent meaning of this paragraph is that the Council can act under article 11 after a verdict has been given by the Court or by arbitrators that a dispute arises out of a matter of domestic jurisdiction, but *not* after verdicts have been given in other kinds of disputes, because in disputes about domestic jurisdiction, there has been no final decision of the substance of the dispute, but merely a non-suiting of the claimant state, on the ground that there is a loophole in the existing international rules, "a situation not yet regulated by international law." Both in premise and conclusion the contention is unjustified. It is one of the primary purposes of international law to define the rights of states in matters of domestic jurisdiction; for this very reason, the Protocol compulsorily refers such questions to the Court; while, if practice counts for anything, it must be noted that the Council, whenever such contentions have been put forward, has always taken legal advice, and has accepted that advice as final. The decision of the Council or of the Court on a matter of domestic jurisdiction is therefore a decision

establishing legal rights; that is to say, a substantive and conclusive verdict, like any other. There is no distinction in kind between such cases and any other cases with which the organs of the League may have to deal. Equally the distinction made by the Report between the *effect* of the two classes of decisions is quite untenable. To say that the Council could not exercise its rights, or fulfil its duties under article 11 when a threat of war followed a decision upon an ordinary dispute, is to strike at the foundation on which the League is built, and to do so in a way quite inconsistent with the purpose of the Protocol. Article 11—President Wilson's own article—is vital to the system of the Covenant. Its plain and indisputable meaning is that in every situation, from whatever source a threat of war may come, whatever the nature of any dispute that may have taken place, the Council has always, in all circumstances, the right and the duty of intervention to preserve the peace. The rights and powers so conferred upon it are in no way increased or diminished, nor is their application in any way restricted, by the provisions of article 5 of the Protocol. It was only because this was perfectly plain that the British delegates accepted the Japanese amendments. If there were any doubt on the matter, it would be removed by the following passage from a speech made to the First Committee of the Assembly by the Legal Advisor of the Foreign Office, Sir Cecil Hurst, on September 30, 1924:

"It is the understanding of the British Delegation in accepting this amendment, that the text now adopted, which it is proposed to add to article 5, safeguards the right of the Council to take such action as it may deem wise and effectual to safeguard the peace of nations in accordance with the existing provisions of article 11 of the Covenant. We accept it because we believe that it does not confer new powers or functions on either the Council or the Assembly. Those powers are already defined by the Covenant as it exists to-day, and we do not add to them by this text."

Sir C. Hurst would no doubt have added to his statement that article 5 in no way limited the powers of the Council

to disputes concerning domestic jurisdiction, had it occurred to him to do so; but it did not, because those powers are expressly safeguarded by article 19 of the Protocol. If his statement, which is evidently of commanding authority, had received in the British press the attention it deserved, there would not have been so much misconception as there has been either in this country or in the Dominions concerning the effect of the Protocol on this important matter of domestic jurisdiction.

Other remarks of the Report on this subject are also open in some measure to objection. It goes on, for example, to say that this insertion in article 5 of a reference to article 11 of the Covenant has the advantage that

"it will be an incitement to science to clear the ground for the work which the League of Nations will one day have to undertake, with a view to bring about, through the development of the rules of international law, a closer reconciliation between the individual interests of its Members and the universal interests which it is designed to serve."

This statement of an important point is by no means happy. The correct way of stating it would appear to be that the insertion of the reference to article 11 is advantageous, because the use of article 11 in the circumstances contemplated may indicate the points upon which a change of the existing law is necessary or desirable. No one denies that there may have to be changes in the present rules of international law concerning the rights of domestic jurisdiction, as there may have to be changes concerning other parts of the international legal system. This may even be true of the present rules concerning the control of immigration; though no one who understands the nature of international law, or who is in touch with international affairs, believes that such a change could possibly be made without the consent or, indeed, probably without the initiative of the U.S.A. and the British Empire. Certainly such an initiative, contrary to the general belief, would never be taken by the Government of Japan, which applies the existing right of

absolute control of immigration more rigorously (against Chinese desiring to go to Japan) than it is applied by any other state. But if such changes in the law should be required, article 11 would provide a means by which attention could be drawn to the fact. That is the purpose and the effect of the reference to it in article 5. But again there is no distinction between its application in disputes about domestic jurisdiction and in other classes of disputes. In either case, the rigid application of the law by the Court or by arbitrators may demonstrate a need for change. The provisions of article 11 might be useful in such circumstances because they furnish a political safety valve. Like article 19 they provide an opportunity for further discussion of dangerous situations, and perhaps, if it be required, for securing the change of existing rules and rights by mutual consent. But let it again be repeated that article 11 cannot be used for securing change of existing rules and rights except by consent; and that, for *that* purpose, it can be used not only in certain cases, but in every case and every circumstance.

Ought there in any circumstances to be Compulsory Arbitration of Non-justiciable Disputes?

It is sometimes said, even by those who welcome the obligatory jurisdiction of the Court in justiciable questions, that the most serious defect in the Protocol is its application of compulsory arbitration to non-justiciable disputes. Those who hold this view argue that in other spheres where it has been given practical application—for example, in industrial disputes—compulsory arbitration has succeeded when it has been applied to questions which can be settled by the application of accepted rules, but that it has failed when such rules do not exist. They admit that voluntary arbitration may succeed and has often succeeded in non-justiciable matters; but this, they argue, is because it is always set in motion by a preliminary agreement among the parties as to its scope and method. But where there is no such preliminary agreement, when arbitration is imposed against the will of a party, the award which results inevitably

seems purely arbitrary to that party; for this reason, they conclude that although compulsory arbitration in international disputes may in some cases avert war, it may in others precipitate it, by forcing on the parties what they regard as arbitrary injustice. Those who argue thus sometimes quote in support of their contention the pre-war dispute between Great Britain and Germany about the Baghdad Railway, a non-justiciable dispute in which, they say, compulsory arbitration might have precipitated war, and to which in any case its application would have been absurd.

The argument is worth attention because, as said above, it may well cause difficulty to some governments who genuinely desire to accept the Protocol. The words "compulsory arbitration" still have a disagreeable sound to practical men, who remember the controversies which took place about it before the War. They remember the valid arguments brought by serious-minded and progressive international lawyers against the complete system of compulsory arbitration then proposed; and few realize how much the force of these arguments has been reduced by the creation of the permanent political institutions of the League.

The case in favour of the Protocol provisions on compulsory arbitration may perhaps be stated as follows:

First, the number of disputes which are genuinely non-justiciable is much less than is sometimes believed, and it is tending and will tend to decrease. As the system of international law grows in strength and extent, as new treaties are made between individual states or groups of states, so more and more relations are governed by specific and recognized legal rules, capable of legal interpretation, and thus cease to be potential causes of non-justiciable disputes. The present very rapid growth in international law [1] is in this way fast reducing the scope for the use of compulsory arbitration under the Protocol.

Second, the objection now under consideration would carry more weight if compulsory arbitration stood alone as

[1] Cf. Article entitled "Codification of International Law" appearing in the *British Year Book of International Law*, 1924, pp. 38–63.

the sole means for the settlement of disputes, as was generally proposed by its adherents before the War. But this is not at all its position in the Protocol. On the contrary, it is entirely secondary; it is a last resort after other methods of settlement have failed. Under the Protocol every justiciable dispute will on the demand of any party be dealt with and settled by the Court. It is *only* in non-justiciable disputes, therefore, that arbitration can be compulsorily applied, and in such disputes the Council must first use its powers of conciliation. Moreover, if the experience of its work under the Covenant is any guide, the Council will use these powers to great effect and will settle the vast majority of the cases that come before it. And the greater the success of the Council, the more disputes it settles by consent, the less, of course, is the scope for compulsory arbitration. Indeed, it may well be that in practice it will be hardly used. There was a good case for holding that under the Covenant as it stands the right of voluntary arbitration (which, of course, the Covenant maintained) would never be used, at any rate for disputes of importance. On this point Sir Frederick Pollock in a recent paper has said that "all appearances so far point to the machinery of quasi-judicial arbitration, set up by the Hague Conferences before the War, becoming obsolete."[1] If this view be correct, it is because the other methods of the Covenant —the voluntary judicial procedure of the Court and the conciliation of the Council—are, in fact, better adapted than voluntary arbitration for securing satisfactory settlement of the two different classes into which disputes are broadly divided. And there seems no reason to doubt that this, generally speaking, will be as true of compulsory arbitration under the Protocol as it was of voluntary arbitration under the Covenant. And for the same reason, namely, that the other methods of the Court and Council will, in nearly every case, be better suited for securing a satisfactory result. It is safe to say that governments, in deciding how they will deal with their disputes, will generally

[1] *Vide* the *Covenant and Protocol*, p. 9, published by the League of Nations Union.

choose the tribunal that is most adequate for the purpose, even when they are in the difficult frame of mind engendered by litigation. For example, it is easy to say that the submission to compulsory arbitration of the pre-war Baghdad Railway dispute, which related to concessions for the exploitation of the territory of a third Power, and which was partly military and partly economic, would have been unwise, and that the Protocol is dangerous because it opens up the prospect that other similar disputes will be dealt with in this way. But the obvious reply is that no government in its senses would dream of sending such a dispute, which was in no way a matter of rights, but simply of conflicting political ambitions, to arbitration, at least until every other means of dealing with it had been exhausted, and until war was threatened. Cases such as these, therefore, do not really furnish a valid ground for thinking that any great use will be made of compulsory arbitration in non-justiciable disputes for which it is unsuited, unless, indeed, it happens that the Council fails in industry or impartiality in seeking settlement.

It may be, of course, that the mere existence of this ultimate right of compulsory reference to arbitration may so affect the course of conciliation proceedings before the Council in non-justiciable disputes, and may so alter their nature, as to invalidate the above contention. Under the Covenant, if such proceedings fail to produce a settlement by consent there may follow either deadlock or a right of war; it is sometimes argued that this ultimate risk of war has a restraining influence on the parties, and brings them to make concessions which otherwise they would reject, and that, *per contra*, the removal of this risk of war and its replacement by the right of compulsory arbitration will take away the inducement to settle, and will thus render the task of the Council much harder than it is to-day.

The argument at first seems plausible, but on examination it loses force. To begin with, the removal of the threat of war can only affect in the way suggested the attitude of those parties to a dispute which are militarily the weaker. It is possible that it might make such states less yielding

than under the Covenant they would be. But whatever change there may be on this side is counter-balanced by the exactly opposite effect which will be produced on those parties which are militarily the stronger, and which in reliance on their strength may be inclined under the Covenant to make no concessions of any sort. Since, under the Protocol, such states may be obliged to go to arbitration, they will be readier to accept any fair proposal that may be made. Thus, against the loss through the removal of the threat of war of a *possible* advantage, the Council will gain a *certain* and substantial advantage on the other side, and since strong military powers are almost always more difficult to deal with in disputes than weak ones—this is borne out by the whole of diplomatic history—the Council's gain will be greater than its loss.

But, in any case, the application of this argument to proceedings in non-justiciable disputes is not very plain. In justiciable disputes it may well be that a state which is free from the fear of ultimate military pressure may stand unyieldingly upon its legal rights, since under the Protocol it will be sure, if its legal case is sound, of the verdict which the Court will give ; it will for this reason have less motive for concessions, even where moral justice demands that it should make them. This, of course, is but a special application of the general argument that the Protocol will stabilize the existing legal *status quo*—an argument which will be dealt with later. But in non-justiciable disputes it is by no means plain that the removal of the threat of war will have this effect. For in non-justiciable disputes no party can be sure of the award which will be given as a result of compulsory arbitration. Every party has to face the prospect of an impartial award, given on general grounds of equity. It cannot know in advance what this award will be. Whatever it is, it will be pledged in good faith to carry it out. It has, therefore, every motive to accept any fair settlement that may be proposed during the proceedings of the Council.

In short, the only case in which the Council's task is likely to be made more difficult is that in which the weaker

party will become intransigeant when it is freed from the ultimate threat of war, and will refuse concessions by which previously a settlement could have been obtained. It is no doubt possible that such cases may occur. But experience up to the present time does not support the view that the threat of war by the opposing party makes states reasonable in their disputes when otherwise they would not be so. The Vilna case has been already mentioned. It is arguable that Lithuania would have accepted the Council's plan of settlement in that dispute if she had known that compulsory arbitration would follow her refusal; but she would not accept it while any threat of Polish military force remained even in the background. There are reasons indeed for holding that the effect of the removal of the threat of war will be the exact reverse. It is fear of military dangers which drives governments to most of the unjust and provocative policies they pursue. The desire to govern populations of an alien race; the consequent unreasoning desire at all costs to extend existing frontiers; the injustices to which alien minorities are not infrequently exposed—all spring from the fear that is born of the threat of war. Wipe out that menace from their minds, and governments, it may be argued, will not be less conciliatory in their conduct, and especially in their disputes, but far more so, for their minds will be freed from the fear—the pressing and immediate fear—that hitherto has closed them to the dictates of justice and reason.

There is no ground for holding, therefore, that the removal of the right of war will prevent settlements which under the Covenant the Council would have been able to obtain. Even if it were so, it might not be matter for regret; settlements achieved by fear of force do not always make for justice, nor even, in the long run, for peace. But it is not so; the argument just dealt with in no way supports the view that the right to compulsory arbitration will make conciliation by the Council more difficult in non-justiciable disputes, still less that it will wipe out the Council's function altogether.

The contention here put forward is not, of course, that the right of compulsory reference to arbitration given by the Protocol will never be used. No doubt it sometimes will be. The contention rather is that, owing to the nature of international disputes and of the general Protocol system for dealing with them, it will remain, in all probability, more a safety valve than a normal method of procedure. The probability is much increased by the fact that under the Protocol there will be lengthy, costly and arduous proceedings to be gone through before any result can be reached by compulsory arbitration; the parties will thus have a political and material as well as a moral inducement to think better of their quarrel, and to come either to agreement through the Council or to direct agreement, as parties so often do in civil litigation.[1] It is plain how this must reduce the chances that many non-justiciable disputes will, in fact, be settled under the Protocol by compulsory arbitral award.

But even if, in some cases, non-justiciable disputes were under the Protocol to be dealt with and decided by compulsory arbitration, it did not seem to the authors of the Protocol that this in principle was wrong. It has been argued above that even among non-justiciable disputes, the cases where the arbitral award could not be founded, at least in part, on legal or quasi-legal grounds would in all likelihood be rare. If states are willing to bind themselves in advance to accept in such rare cases the arbitrary but impartial decision of an arbitral tribunal, there seems no valid reason why they should not; the more so, since, unless the parties are content with deadlock, which *ex hypothesi* they are not, the only alternative solution that can be proposed is war.

In fact this is the alternative solution which those who oppose compulsory arbitration usually propose: they urge the retention of a right of war. But it would be difficult for Great Britain to insist upon this right, when all the other Members of the League are anxious to give it up and to get rid of war altogether; the more so, since such powerful non-Members as Germany and the United States are of the same

[1] Sir F. Pollock, *loc. cit.*, p. 12.

opinion. A government whose Empire already embraces more than a quarter of the land surface of the world might find it particularly difficult to explain.

Does the Experience of Compulsory Arbitration in Industry furnish Arguments against the Protocol ?

It has been said that the case against the compulsory arbitration provisions of the Protocol is usually based on the analogy of compulsory arbitration in industrial disputes. It is argued that the experience of industrial arbitration has shown, first, that an ultimate right of compulsory arbitration will always be exercised, and that preliminary stages of conciliation are thus rendered useless ; and second, that awards which result from compulsory arbitration have no moral authority either with parties directly concerned or with the general opinion of employers or employed ; that such awards are therefore very unlikely to be observed ; and that any attempt by coercion to secure observance will only precipitate illegal resort to force by the discontented party.

The application of this argument to the Protocol has in part already been examined. But it must be added that the whole analogy is false. In no particular does international arbitration resemble industrial arbitration. The penalties of failure to secure pacific settlement in the two cases differ fundamentally. A strike is a matter of economic gain or loss ; a war is a matter of national life and death. The risk of strikes produces, therefore, no such disastrous effects on the disposition or the general policy of either employers or employed as are produced by the risk of war on the attitude and policy of states. Above all, the experience of compulsory arbitration in industry is irrelevant to the Protocol, because it has almost always been imposed on industrial communities by Act of Parliament against the will of both employers and employed ; they have not accepted it by voluntary contract as states would accept it under the Protocol. This fact alone explains, as all economists admit, why compulsory arbitral awards in industrial disputes have sometimes had little moral authority with the parties, and why the opinion of their fellows has

sometimes supported those who refused to comply with such awards.[1]

But experience of this sort is no guide to the probable working of compulsory arbitration under the Protocol, for the simple reason that there is a widespread enthusiasm for its acceptance among the governments which made the Protocol. Indeed, no one who knows the facts doubts for a moment that the moral authority of an award under the provisions of article 4 would be immense both with the parties and with all the Members of the society of states. Nor must it be forgotten that just because that society is restricted in numbers, the power of public opinion on its Members is peculiarly great.

Every analogy between the political psychology and probable action of individual citizens and of states is apt to be misleading. But if any analogy is to be made in respect of compulsory arbitration, a far truer one is to be found in the working of compulsory arbitration accepted by voluntary agreement of the parties for all disputes arising out of commercial contracts. With every year that passes, this sort of compulsory arbitration—far more closely analogous to the proposals of the Protocol than compulsory arbitration in industry—is being more widely accepted, and is achieving a greater measure of success.

Compulsory Arbitration of all Franco-German Disputes.

There is one other consideration relating to compulsory arbitration to which British statesmen must evidently attach importance in settling their policy about the Protocol. The peace of Europe is recognized as a vital British interest. For half a century the peace of Europe has depended on the relations between Germany and France. There are still grave questions of policy, on the one hand, and traditions of mutual hatred and distrust, on the other, which prevent the reconciliation of the French and German peoples. In

[1] Cf Pigou, *Economics of Welfare*, pp 377–415. It may be added that even in industry compulsory arbitration has by no means always been a failure, though general experience has been discouraging.

1924 a settlement was made of some of the more important matters which had recently divided the two governments; but there are few things in politics more probable than that at some time in the future, perhaps not far distant, new controversies will arise between France and Germany concerning the application of the Treaty of Versailles. There could be no greater safeguard for European peace than that both countries should be bound by a solemn agreement to refer all such controversies to impartial settlement by the Court, by the Council or, in the last resort, by compulsory arbitration, and that they should undertake to abide by the result. If this agreement were embodied in a general treaty to which almost the whole world were party, and therefore interested in its loyal and integral fulfilment, the safeguard for European peace would be greater still. This may be practically and immediately possible, if the Protocol is generally accepted; for France has promised not only to accept its obligations for herself, but also to welcome Germany as a party on entirely equal terms; while according to all present indications Germany, for her part, will be no less ready to accept them.

The point will appeal with special force to those who hold that Great Britain has a direct interest in French security, and who therefore think that we ought to give France some kind of undertaking that we would assist her if she were attacked by Germany. As every British Government since the War has recognized a moral obligation to accept some such responsibility for French security, and since it is said that the present Government is not less concerned about the matter than its predecessors, the point is by no means academic.[1]

[1] Cf. especially speech by Mr. Austen Chamberlain, Secretary of State for Foreign Affairs, on Jan. 31, 1925, in which he said: "Europe is still suffering profoundly from the unrest of the war, and . . . the first act of statesmanship must be to give security to the new order of things. . . . The first thing I set myself to do was to renew and re-affirm the close understanding and cordial relations which had existed between ourselves and our allies. France has need of guarantee against the repetition of the injuries which she has received in recent years, and until she receives such security we will not have allayed the fears or taken the first step necessary towards the forgetting of ancient feuds."—*Sunday Times*, Feb. 1, 1925.

CHAPTER VI.

THREAT OF AGGRESSION; PREVENTIVE MEASURES. DEMILITARIZED ZONES.

THE purpose of the Protocol, to which every article is directed, is not the suppression of war when it has broken out, but its prevention. So far, this book has dealt with its first six articles, which relate to what is loosely called "arbitration"; that is to say, to the moral guarantees against war. It is now necessary to pass on to material guarantees. These are contained in the next three articles—7, 8 and 9—which will be taken together.

As will be seen, this arrangement is logical. Article 7 is intended to forbid acts which might prelude or lead to aggression immediately before or during the course of an international dispute; it contains provisions enabling the League to take appropriate measures to deal with the dangerous situations which such acts might cause. Article 8 is similarly intended to prevent or remedy such acts if they occur when there is no dispute pending or under consideration by the League; for example, infringements of the scales of armament to be laid down in the Disarmament Convention to which the Protocol is but a preliminary step. And article 9 is related to articles 7 and 8, because it makes provision for the voluntary establishment of demilitarized zones, which are but a permanent and specially important example of the general measures which the League by these articles is empowered to take for the prevention of war.

The undertakings of articles 7 and 8 are quite straightforward. By article 7 the signatories agree that if they are involved in a dispute, they will not, either before it is

actually submitted to League proceedings, or during such proceedings, make any increase of their armaments or effectives over and above the amount or number allowed to them by the Disarmament Convention, and that they will not take any measure of military, naval, air, industrial or economic mobilization of any kind. There is also a further undertaking, more general in form and hardly less important, that they will commit no act " of a nature likely to extend the dispute, or to render it more acute." These words are intentionally wide, and might, in circumstances that are easy to conceive, be of great service to the Council of the League.

By article 8, the signatories undertake to abstain at all times and in all circumstances from acts which might constitute a threat of aggression, and agree that if any of them " is of opinion that another state " (whether signatory or not) " is making preparations for war, it shall have the right to bring the matter to the notice of the Council." The language again is wide, and intentionally so.

It is clear that some provisions of this sort are necessary to the working of the Protocol. They are obviously required to enable the procedure for pacific settlement of disputes to be successfully used. If in the course of proceedings before the Council or the Court, the parties were free to mobilize and prepare for war, the chances either of agreement or of acceptance of a verdict would, it is plain, be much reduced. They are likewise required to make effective any scheme for the reduction of armaments upon which the International Conference may be able to agree. If there were no effective undertakings that the scales of armament so agreed to would be observed, the whole work of the Conference might easily break down, and the Protocol itself thus come to naught. Again, some such provisions as these are needed to meet the threat of war. It is not hard to imagine governments drifting into situations from which war might be the only issue, unless these articles were used to save them from it.

But if a large number of states are to accept obligations, first to reduce their armaments, and then to give military assistance to any state which is attacked—obligations of

the utmost gravity if war were ever to occur—and if they do so on condition that the other signatory states will faithfully observe their mutual undertakings to commit no act of aggression, to make no preparations for war, to adhere strictly to the scales of armament allowed them by the Disarmament Convention, it is clear that they must have some material assurance that their good faith will not be betrayed. The signatories to the Protocol, that is to say, must have some right of "mutual control" over their respective observance of the undertakings of articles 7 and 8; some right to make investigations if one state has reason to believe that another is not fully carrying out the promises it has made.

But what form can this right of mutual control assume? A power of investigation conferred on individual states would be open to obvious and grave objection, and would lead to the sort of friction caused by the Allied Disarmament Commissions in Germany and elsewhere. Such an experience as that of these Commissions bears a warning for the future. Under the Protocol, therefore, the right of investigation is entrusted, not to individual signatory states, but to the Council of the League, to whom a government must address any complaints which it may have to make. The Council is thus made responsible to the signatories for carrying out investigations that may be required, and for deciding whether the undertakings of articles 7 and 8 have been faithfully observed or not.

It must be noted that the right so conferred upon the Council is strictly confined to the taking of measures required for the prevention of war. Its action under these articles can in no case affect the ultimate settlement of any dispute that may be pending. This, of course, is in accordance with the principles of the Protocol.

The powers given to the Council to enable it to carry out its duty of control are very wide. Article 7, indeed, puts no limitations on the action it may take. It merely provides that the Council shall, "if it deems it expedient, arrange for inquiries and investigations in one or more of the countries concerned." It further provides that these

inquiries shall be carried out with the utmost dispatch; and "the signatory states undertake to afford every facility for carrying them out." This undertaking by the signatory states is clearly needed if the Council is to be able to fulfil the very serious duty which it assumes; it is, indeed, the necessary counterpart of its responsibility to protect the signatories against breaches of the Protocol and the Disarmament Convention. But although it is plainly required, objection is sometimes made—particularly in Great Britain—to this undertaking required of signatories to facilitate investigation into their national armaments.

The critics urge that it is a sacrifice of military liberty to which no government in present-day conditions can be expected to agree. In reply to this, it may be enough to say that France, the military leader of the world, whose General Staff has always exercised great influence on national policy, is not only ready now to accept investigation by the League into French armaments, but has pressed for a general system of League control ever since the Covenant was first discussed. But the critics go on to argue that, besides being wrong in principle, the right of investigation would be ineffective; that the Council could find out nothing of any value; that secret military preparations of the most important kinds—gas, aircraft, and so on—can be hidden from any organ of investigation. No doubt there is force in this contention; but, nevertheless, the opinion of many experts upholds the view that, with the assistance of the various national secret services, no military preparations on any considerable scale could be concealed. The General Staffs of most countries to-day are rarely in error as to the preparations of their neighbours, and the League's right of control will not replace, but supplement, the measures which they will continue respectively to take. For these reasons the Fifth Assembly overruled the objections brought against the right of investigation contained in articles 7 and 8, being unanimously agreed that it is essential to any plan for preventing war and reducing armaments, and that without it states of bad faith might make the whole system of the Protocol a farce.

With regard to the mechanism to be used by the Council for investigations that may be required, the Report assumes that the Disarmament Conference, as part of its general plan, will set up some permanent organ for the purpose. The nature of this organ was only tentatively discussed at the Assembly; but it was usually assumed that the system created by the League in virtue of article 213 of the Treaty of Versailles for the control of armaments in the ex-enemy countries would be generally applied. This plan would be simple and effective: the League has done its work with thoroughness and care; and it is highly probable that the Disarmament Conference when it meets will adopt it, and will thus settle in advance the mechanism which must be used by the Council for whatever investigations it may have to carry out. In any case, it may be hoped that the Conference will agree on some workable and standing arrangement about investigations, for experience in the League has shown that there may be immense practical advantage in using regular and established machinery at international crises. But of course failing further agreement by the Conference, the Council would, under article 7 as it stands, be free to create an *ad hoc* body for each investigation, if it so desired.

But investigation alone does not end the responsibility of the Council towards the signatories of the Protocol. It may, as a result of its investigations, decide that there is, as alleged by the complaining state, a real threat of aggression, whether by mobilization, excess of armament or other warlike preparation. In that case, article 7 provides that it shall first summon the state guilty of the infraction of its obligations "to put an end thereto." If the guilty state refuses, the Council is to make a solemn declaration of its guilt, and must forthwith "decide upon the measures to be taken with a view to end as soon as possible a situation of a nature to threaten the peace of the world."

Again, it may fairly be said that some such provision as this is necessary to the maintenance of peace. The right of investigation, if it stood alone, would not adequately protect the interests of signatory states which have reduced their

armaments, or undertaken to render assistance to states which are attacked. But, if this is agreed, the question next arises, what " measures " the Council may decide upon for bringing to an end an infraction of treaty obligations that has taken place. The answer is not easy. Article 7 in no way specifies what the Council may or may not do. It must therefore be assumed that it is given very wide discretion to decide upon whatever measures in its opinion are required. But one measure which is certainly within its powers, and which it will propose in every case where infraction has occurred, will consist in demobilization, or in the destruction of excess armaments, under the impartial control of officers appointed by the League. Similarly, since the main purpose of articles 7 and 8 is to prevent the outbreak of war, and since, *ex hypothesi*, preparations for war have actually begun, the Council would probably, in most cases, propose a neutral zone between the armed forces of the countries involved in the dispute and would demand that the guilty state should withdraw its forces of every kind from this zone, which, again, it would place under the control of agents of the League.

It might happen, however, that the guilty state refused to comply with the demand of the Council that it should cease its disloyal preparations for war. In this case it is plain that " provisional measures," as they are called in article 10, would not suffice, and that the Council would have to go further and to apply measures of coercion. It would appear that under article 7 the Council has authority to " decide upon " such measures. But plainly while these measures may include all those mentioned in Chapter IV above,[1] they must be short of actual war, for the whole purpose of these articles is to prevent a dangerous situation developing into war; while again, as when the Council " proposes steps " to secure compliance with a verdict or award, the signatory states are under the strongest moral obligation to act on its proposals, but have no express legal obligation to do so.

There is one more important point about the Council's

[1] *Vide supra*, p. 55 *seqq.*

duties under articles 7 and 8. Some such provisions as those above described are plainly necessary to the maintenance of peace, and therefore to the purpose for which the Protocol was made. It is also necessary under the Protocol, as has frequently appeared, to avoid deadlock of any kind; and it is of particular importance to avoid a deadlock which might prevent the Council at a crisis from carrying out its duties under articles 7 and 8. For these reasons, the Protocol provides that in all questions arising out of these two articles the Council may act "by a two-thirds majority." This provision has so far excited little comment, which is odd, because it gives the League a power to act without unanimity in questions of great practical and political importance. But it must be observed that it is a power only to prevent war, and for no other purpose. As has been said, it is specifically provided that no action by the Council under these articles shall in any way affect the settlement of disputes or produce other than preventive and transitory effects. For this restricted purpose, the right to act by majority is hardly open to objection, and few who on other grounds accept the Protocol will for this reason reject it. It is a right which follows logically from the purpose of the Protocol, which is to prevent war—to do so with no avoidable coercion of the sovereign will of individual states, but to do so at all costs. It would, indeed, have been more logical to have adopted the proposal actually made to the Assembly, but rejected—that the Council should for this purpose act by simple majority. The rejection of this proposal leaves a possibility of deadlock; but it was felt that a two-thirds majority would be practically effective and would be a less violent departure from the ordinary League rule of unanimity in all decisions of substance.

In conclusion, it may be said again that some such powers as those granted to the Council by articles 7 and 8 appear to be a necessary part of the system of the Protocol. The wording of the articles is not sacred; the same purpose perhaps might be achieved by other means. But without some such drastic powers as these to deal with dangerous situations by "provisional measures," and to take what-

ever steps may be required to avert aggression and the tremendous consequences which it involves, no system of cooperative sanctions against war could be made to work.

Are the Provisions of Articles 7 and 8 Dangerous to the Security of the British Empire?

It is sometimes objected that the undertaking of article 7 not to mobilize during the course of a dispute might constitute a military danger to the British Empire. It is argued that while Great Britain would no doubt scrupulously observe this undertaking, the other party or parties to a dispute would utilize the "interim period" during the League's proceedings to make secret preparations for war, and in particular to prepare plans for the treacherous destruction of vital means of communication, such as the Suez Canal, upon which the security of the Empire so largely depends. It is further said that since the responsibilities of the Empire are widely scattered, and since we must maintain a great part of our military forces near its centre, we shall only be able to gather our strength at the point or points where it is needed with less speed than our enemies, and that therefore, if our hands are tied by an undertaking not to mobilize during a dispute, we shall be severely and unfairly penalized if war ultimately breaks out.

This argument applies, of course, only to the case where war is made against the Empire during or after proceedings before the League. But that is not the only possible case, nor under the system of the Protocol is it the most probable. On the contrary, there are strong grounds for the view that if the Protocol is seriously believed in by the states which sign it, the pressure against war, once League proceedings have been begun, will be so great that not even intense national resentment against a decision or an award would lead to more than passive resistance to its execution. In other words, there are grounds for the view that the only sort of war which under the Protocol will remain in any way likely is that of sudden surprise attack, carefully premeditated and prepared, and launched either in time of

full peace or at least before proceedings before the League can be begun.

Why is it unlikely that war will occur once League discussion of a dispute has been begun? First, it must be remembered that, under the Protocol, the "interim period" is not followed (as under the Covenant in some cases it is) by a right of war; on the contrary, whatever the outcome of the Protocol procedure for the settlement of a dispute, no party will, in any circumstances, have such a right. An intending aggressor can therefore gain nothing in this respect by waiting through the "interim period" before it launches an attack. Second, if it does go to war, it will have leagued against it a great proportion of the world. Third, it must attack after its people have had a long period of delay for reflection, and after an impartial verdict has been given by the Council or by a judicial or arbitral tribunal upon its claims. Fourth, the delay of the "interim period" cannot in any way improve the moral position of an aggressor. Under old conditions, while sudden attack was universally condemned, an aggressor's position in the eyes of the world was sometimes bettered by protracted and secret negotiations in which he professed to be seeking peaceful satisfaction for his claims. Under the impartial methods of the Protocol, with full publicity for the League debates, the moral position of a state which commits an act of aggression after the "interim period" will be no better, but probably even worse, than that of a state which makes a sudden attack. Fifth, the best chance which an aggressor would have to escape the consequences of aggression would lie in his power to strike a sudden and decisive blow, and thus to destroy his enemy with such rapidity that there will be no time for inquiry as to whether his plea of self-defence is sound, and with such decisive effect that the other signatories of the Protocol, faced with the *fait accompli* of the victim's military defeat, will have no inclination to give their tardy help. For this to be possible, the aggressor must, of course, achieve complete surprise, and such complete surprise would clearly be easier to effect in times of unbroken peace than at any moment after the "interim period" had once begun.

Neither secret military preparations of any kind, nor, in particular, secret plans for the destruction of the communications of the British Empire, could be made more effectively during the "interim period" than during times of peace. On the contrary, however scrupulously we observed our undertakings under article 7, British secret services would certainly be especially vigilant during the course of a dispute, and if secret preparations were attempted on any considerable scale, it is almost certain that our military authorities would find them out, and that we should exercise our right to demand investigation by the Council of the League. In this way, the right of investigation would reduce the chance that war would occur after League proceedings had begun, and together with the obligations not to prepare during the "interim period," it would actually constitute a safeguard for the Empire.

The general conclusions to be drawn from the above considerations are that if the Protocol becomes a working reality, no state will risk aggression, except by surprise attack, made according to a carefully prepared and premeditated plan, and that such a plan can be put into effect with better hope of success before rather than after the consideration of a dispute has been undertaken by the League. What, then, would be the effect of the Protocol in a case of such surprise attack? Would it be to strengthen the position of the British Empire, or to weaken it?

Evidently the effect will be to strengthen the position of the Empire, by bringing to the assistance of our Imperial forces the help of the other signatory states. And the fact that the British Empire could not concentrate its forces at a given point as quickly as its enemies—which, after all, is the result not of the Protocol but of geography, and which will be just as true if we remain in isolation—only increases the importance of this help.

But of course it is possible that the case which the critics take will actually arise, and that after a dispute has been dealt with by the League and a decision rendered in favour of the British Empire, the other party to the dispute will be so dissatisfied with this decision that it will then attack.

In this case, would a right to mobilize during the "interim period" be an advantage to the British Empire? It is no doubt possible that it might, on the supposition that we were able to carry out our mobilization while our enemy was still hesitating whether or not he would attack. But it must be admitted that, in modern conditions, such a supposition is most improbable. Almost always the only effect of mobilization would be to precipitate attack, in which case our disadvantage remains exactly what it would be if the provisions of the Protocol applied. If, however, our mobilization did not precipitate attack, we might perhaps be better off when war began. Against that hypothetical advantage we must set the advantages of the Protocol—first, that war might in many cases be prevented, where, if mobilization were allowed, it would probably break out; and second, that if we were attacked, we should have on our side the help of all the other signatory states. To whatever practical military situations the above arguments may be applied, they seem to the layman to leave the balance of advantage with the Protocol. Even in the most difficult case which perhaps it is possible to take—a Japanese attack, after League proceedings, upon Hong-Kong and Singapore—it would appear that we should lose more than we should gain by a right to mobilize while the dispute was going on. It is, of course, argued that in this case the real advantage would be that British mobilization, if promptly carried through, might restrain the Japanese from attacking at a moment when they were still in doubt as to whether they would do so. But if they were to be restrained at all by such considerations, if they were not attacking as the result of a long-premeditated and treacherous determination to upset the *status quo*, surely the prospect, or even the possibility, of a world alliance against them will be a still more powerful restraint than the isolated mobilization of the British Fleet? And of course articles 7 and 8 must not be judged by one case, but by the generality of possible cases; and even if it were admitted that in this special one which has been quoted, mobilization might be used to prevent a war, it must also be admitted that in the

overwhelming majority mobilization, in modern conditions, would so inevitably precipitate attack that it would be practically equivalent to a declaration of hostilities, and that, therefore, to allow a right to mobilize under articles 7 and 8 might, at the least, imperil the whole efficacy of the Protocol for its chief purpose of preventing war.[1]

Demilitarized Zones.

It was said above that in most cases where there was a proved menace of aggression, the Council would almost certainly establish a demilitarized zone between the armed forces of the parties to the dispute. It is natural, therefore, that the Protocol, the purpose of which is to do everything that is likely to avert war, should make provision for the permanent establishment of such zones in places where there is special danger of its occurrence. Article 9 accordingly "recommends" the establishment of such zones.

The article does not define what it means by "demilitarized." It may be assumed, however, that such zones would be similar to those which have already been set up by certain treaties; that is to say, the agreement to establish them would prohibit the construction in the zones of fortifications, camps, barracks or special military railways or sidings, or the maintenance therein of armed forces, stores of weapons, ammunition or other military supplies.

It has been denied by some military authorities that the establishment of such zones is in any way a guarantee against aggression. These critics admit that, in one sense, a demilitarized zone would constitute a material barrier to an attacking force. In modern conditions the mobilization and movement of the great bodies of troops that are required is a very complicated operation, and it would be made much more so by a demilitarized zone of, say, 30 miles in width, which would separate the attacking force by that distance from its main supplies of food and ammunition. The effect of this would plainly be to make surprise attack more difficult.

[1] It is true that naval mobilization is difficult to define, and that if the British Fleet were unable to move its ships at all after a dispute began, injustice might in conceivable circumstances result. This might be met by giving the Council a power to authorize the movement of ships.

But the critics say that in another sense a demilitarized zone is not a barrier to attack, since the fact that it is unfortified must make it much easier for the enemy to pass than it would be if its defence were carefully prepared. The argument is sometimes pushed further and it is said that the establishment of a demilitarized zone might impose grave disadvantage on a defending state by depriving it of some line of defence of strategic value. For this reason the original version of article 9, as it appeared in the Draft Treaty of Mutual Assistance, stipulated that states should not be asked to make unilateral sacrifices of military advantage. The point is one to which the Italian delegation, on account of their strategically valuable mountain frontiers, attach importance. It is, in fact, wholly covered by the provision of article 9 that such zones are recommended only " between states mutually consenting thereto."

Apart from this, the general argument does not seem conclusive. While, plainly, the existence of a demilitarized zone must make it easier to cross the territory contained in it, that disadvantage is compensated by the advantage discussed above, that a surprise attack will be harder to effect, and the defender will thus have more time to prepare on his lines of defence. That this is of genuine and substantial military value may fairly be deduced from the importance which the French General Staff attach to the zone they have imposed on Germany beyond the Rhine.

But of course any military value which demilitarized zones may have was a secondary consideration to the authors of the Protocol. Their real purpose in article 9 was, first, to prevent the frontier incidents that sometimes lead to war and, second, to render the fact of aggression easier to determine. That for such purposes demilitarized zones may be of value is shown by the fact that on a frontier where incidents are specially likely to occur and where the guilt of aggression would be difficult to decide—the Maritza frontier between the new republics of Turkey and of Greece—the powers who took part in the Conference of Lausanne established such a zone.

There is one other point in article 9 which must be men-

tioned. Its second paragraph provides that in any zone already established, or hereafter to be established by mutual consent, a temporary or permanent system of supervision may be organized by the Council " at the request, and at the expense, of *one or more of the conterminus states.*" This appears to mean that any one of the states which have mutually agreed to set up a demilitarized zone will have the right, if it is prepared to pay the bill, to demand that the League of Nations shall establish a control. No doubt such League control would render a zone much more efficacious for the purposes of the Protocol. It would render secret military preparation within the zone extremely difficult, and would make the determination of aggression a relatively simple task. Though the provision is drastic, therefore, it seems likely to promote the successful working of the Protocol. But where an existing zone is unilateral and has not been established by mutual consent, as in the Rhineland, it might lead to political complications of an unfortunate kind.

CHAPTER VII.

THE DEFINITION AND DETERMINATION OF AGGRESSION.

The Origins of Article 10 of the Protocol.

It was said in Chapter II that the definition of aggression had caused great difficulty in early League discussions on security. The Temporary Mixed Commission considered it for months, but in spite of all their pains, their conclusions met with widespread criticism and dissent. It was urged that the system they proposed would give no guarantee that sanctions would be turned against the state which had been truly guilty of aggression. This indeed was the chief point in all the criticisms that were made against the Temporary Mixed Commission's work, the Draft Treaty of Mutual Assistance. And the critics were right in concentrating their attention on the determination of aggression, for it must be the keystone of any plan for international security. Unless the guilt for the crime of war can be determined with speed and certainty, it is useless to prepare sanctions against the criminal. It is possible that sanctions might mean war by the world at large against a single state; unless it be put beyond all doubt that so terrible a weapon will only be used when guilt is proved, it were better that the weapon should not be constructed.

Before describing the system for the definition and determination of aggression which article 10 sets up, it is necessary to discuss a little more the previous attempts that had been made to devise a sound and satisfactory plan. It is often forgotten that the same problem arises, or might arise, under the Covenant as it stands, and that

the Covenant does not solve it. The Covenant imposes undertakings on Members of the League not to resort to war; it sets up co-operative sanctions, political, economic and military, against any state which disregards these undertakings; but it does *not* contain machinery for determining when these co-operative sanctions shall be applied. On the contrary, it leaves to the individual decision of each Member of the League the question whether, in the event of war, the Covenant has been broken, and whether, in consequence, it is obliged to help the state attacked. It is easy to imagine cases where this gap in the Covenant system might cause grave difficulty to Members of the League. If a dispute were followed by immediate resort to war, before the Council had had time to judge its merits, both parties might claim that they had been attacked, and demand the help of other Members of the League under article 16; and these other Members might be without the information by which alone they could determine which side they ought to help. The result might be the total breakdown of the Covenant sanctions against aggressive war.

Even if there were no practical danger of such a situation, the present form of article 16 is certainly a serious formal defect in the system which the Covenant sets up. It is a defect which the Second Assembly tried to mitigate by the amendments to article 16 which they prepared. By these amendments they provided that if war breaks out, "it is for the Council to give an opinion whether or not a breach of the Covenant has taken place," and they also laid upon the Council a duty to notify to all the Members of the League "the date which it recommends for the application of economic pressure under this article." If this amendment were adopted, no doubt it would do much to meet the practical danger which has been pointed out; but in fact it has not been ratified, although it is three years since the Assembly drew it up. Moreover, even if in force, it would not lay upon Members of the League a juridical duty either to accept the opinion of the Council that a breach of the Covenant had taken place or to com-

ply with its "recommendation" for economic sanctions. There would, no doubt, be a moral obligation to do so and in practice this moral obligation would almost certainly secure effective action by Members of the League. But it would be without any binding force, and it therefore leaves a serious formal and legal defect which cannot be allowed when a new, more precise, and, it is hoped, more effective system of sanctions is to be set up.

It must be noted, however, that this amendment to article 16, while it left a formal defect in the Covenant system, gave and was intended to give to the Council virtually the power to decide in its absolute discretion when a breach of Covenant had taken place. This is important, partly because the amendment was drawn up after very careful work by both the First and Second Assemblies, and by a strong interim Committee appointed for the purpose, and partly because the Temporary Mixed Commission, after prolonged deliberation, reached identically the same result. The plan which the Temporary Mixed Commission embodied in the Draft Treaty of Mutual Assistance left to the Council the duty of deciding in its absolute discretion when aggression had occurred and when, therefore, sanctions were required. The Temporary Mixed Commission always thought the point of great importance, so much so that they set up a Special Committee to study it and report. This Committee held that there were two separate questions to which answers must, if possible, be found: first, what is the true definition of aggression: in the commission of what acts does aggression consist? and second, by what means can it be known that aggression has occurred, by what tests can it be determined that the acts in question have taken place? After an elaborate discussion, the Committee came to the conclusion that it was not possible to answer the first question by defining exactly in what aggression should be considered to consist. Broadly, they said, aggression meant "resort to war," but they held that the commission of the first act of hostilities might not in itself involve the real guilt for their outbreak. If its neighbour had mobi-

lized or had otherwise prepared for war, a weaker state might be obliged, by elementary considerations of self-defence, to seize strategic points outside its borders; but the guilt would lie with the stronger state which had plainly been preparing an aggressive war. Similarly, they said, in some cases the true aggression might lie, not in any military action by either party, but in the policy of deliberate provocation and injustice which one might have pursued. Therefore, the Committee concluded, the various factors in aggression are too numerous and too complex to permit of precise definition. And as a logical result, they said that the second question also could not be answered; that it was no less impossible to lay down specific tests by which it could be known when aggression had actually occurred. They accordingly proposed to leave the Council of the League entirely free to decide in its discretion when aggression had taken place, and they provided that if hostilities broke out, the Council should forthwith meet and should determine, within four days, which side was the guilty party against whom sanctions were required.

This solution, although identical in principle with that unanimously adopted for article 16 by the Second Assembly, provoked vigorous criticism from the Fourth. The critics no doubt were saved from the charge of inconsistency by the fact that the Second Assembly only gave the Council power to recommend, while in the Treaty of Mutual Assistance its decisions bound the signatory states. But this difference, though theoretically important, did not justify the criticisms that were made. It was urged, for example, that since the Council is a political body, the impartiality of which some states, and particularly those still outside the League, are much inclined to doubt, it is quite unfitted to take decisions which might entail a world-wide war against an outlawed state. It was said that the delay of four days which the Draft Treaty permitted, would be fatal to any effective action against the aggressor state; that, nevertheless, four days was much too short a time for the Council to secure the information without which no just decision could be made; and that, since under

the Draft Treaty the Council must decide by unanimity, a single state of bad faith could paralyse its action and reduce the whole system of security to impotent confusion. Such criticisms as these of course were founded on a fundamental distrust of the international institutions of which the League consists. Together they amounted to a denial that any international body could decide such questions as that of aggression, owing in part to the inherent difficulties of its working at a crisis, and in part to the bad faith of the different states of which it must be composed.

This being so, the critics were naturally not convinced by the adherents of the Draft Treaty, who replied that while aggression might be technically difficult if not impossible to define, the Council's task in practice would be relatively simple. These adherents argued that war must result either from surprise attack, in which case it would be obvious which side had made it; or from a protracted international dispute, in which the Council would from the beginning have been involved, and with the whole merits of which, therefore, it would be so familiar that it could quickly reach an impartial and well-founded judgment.

This answer had much force, but it did not satisfy the critics of the Draft Treaty, among whom the most vigorous was the British Government.[1] Thus when the Fifth Assembly met there was no agreement, nor even a basis for agreement, on this point of capital importance; all the efforts previously made had led to no result, and when the Protocol was being drafted a completely new start was needed. A new attempt was necessary to find some simple definition of aggression, and some simple test by which it could be known when aggression, as defined, had actually occurred. For this purpose some of the critics themselves had already put forward a proposal. They suggested that they could find both a definition and a test in "arbitration." They said that if a state which was contemplating war were offered the alternative method of

[1] *Vide* British reply to the Council of the League concerning the Draft Treaty of Mutual Assistance. Report of Temporary Mixed Commission to the Council, September 1924.

settling its dispute by pacific and impartial means, and i it refused this method, it would then be plain that its intentions were aggressive, that its purpose was not the satisfaction of just claims, and that it had some ulterior and nefarious object. They held, in consequence, that by its refusal of the method of "arbitration" or the award to which it led, the aggressor state would be indisputably revealed, and they accordingly concluded that aggression could be defined as the refusal of arbitration or of an arbitral award, and that, in the act of refusal, which would be patent to the world, there lay the automatic test which was required.

The System of Article 10.

From this proposition the Fifth Assembly began its work; from M. Herriot's categorical declaration that the difficulties of "the extremely intricate and perplexing task of determining which state is the aggressor could be solved by the principle of arbitration . . . since henceforth the aggressor will be the party which refuses arbitration." Because of this original conception and of the degree to which it dominated the debates of the Assembly, arbitration figures largely in article 10 of the Protocol; so much so, indeed, that some commentators have asserted that the Herriot system has been applied in full. A distinguished American, for example, has written that in the Protocol "the aggressor is defined as a state refusing to accept summons, or to abide by the decision of the court or arbitral tribunal, or to abide by the unanimous decision of the Council." And he proceeds to elaborate this definition by saying that it is

> "the keystone without which the plans to get rid of war have so far come to nothing. If aggression is not defined clearly, nations will continue to wage war under the pretext of defence . . .; a definite test had to be applied, and that test had to be something of a different nature from the provocative policies or acts of force concerning which there might be two opinions. The definition in the Protocol brushes aside all such controversy, and makes that nation the aggressor which refuses the alternative for war."

Extraordinary though it is that an acute observer should go wrong in the interpretation of a vitally important text, this account of article 10 is entirely misconceived. In the system which article 10 sets up, a refusal of arbitration is *not* the definition of aggression, nor is the act of refusal the automatic test of its commission. The authors of the Protocol did indeed originally intend to apply this principle, but they could not do so because they were unwilling to accept the consequences to which it logically led.

For the purpose of defining aggression in *any* scheme of security must be to determine so far as possible automatically when sanctions must be applied. That is why the question is important. If the definition and the tests of aggression do not tell us when the obligation to apply sanctions comes into force, they tell us nothing; if they do not guide the decisions and the action of the Council, they are useless; they remain a mere declaration about the right conduct of states, important perhaps, but giving none of the practical results upon which any system of joint security must be built. This being so, if aggression is defined as a refusal of arbitration, then such refusal must bring into force the obligation to apply sanctions against the refusing state; if not, we are no further towards knowing when this obligation will exist. In other words, the submission of disputes to arbitration and the acceptance and execution of arbitral awards must be enforceable by sanctions, if arbitration is to furnish the definition and the test which are required.

But the authors of the Protocol were not prepared to depart so far from the Covenant as this. They were willing that the solutions found for international disputes, whether by the Court, by Arbitrators or by the Council, should bind the parties; they were not willing that the carrying out of these solutions should be enforced on them by the full "sanctions" of the Protocol, in the technical sense which articles 10–15 give to the word. Thus their plan falls short of the logical application of the principle from which they started. If a state does not desire to plead its case before the Court or Council, it need not do so;

even if it openly refuses all friendly discussion and defies the League, sanctions are not on that account applicable against it; if its representatives do not appear, the proceedings go peacefully on without them. Likewise, the League solutions of disputes are not to be enforced by sanctions; for securing their execution, the Protocol provides other measures, in which the signatory states have only a moral and not a legal obligation to take part, and from which the technical name of sanctions is deliberately withheld.[1]

The Definition of Aggression.

If then aggression is not the refusal of arbitration, what is it? Against what crime are sanctions proper, as the Protocol defines them, to be applied? The Preamble speaks of a "war of aggression" as an "international crime." Against this crime and this crime only do sanctions come into play. Thus the definition of aggression in the Protocol is the simplest and most obvious there could be: aggression is resort to war; the aggressor is the state which declares war or, failing formal declaration, whose soldiers fire the first shot, first violate the territory of another state or take other warlike action.

The first paragraph of article 10 is so clear that it is odd that anyone should have been able to misread it:

> "Every state which resorts to war, in violation of the undertakings contained in the Covenant or in the present Protocol, is an aggressor. Violation of the rules laid down for a demilitarized zone shall be held equivalent to resort to war."

That is the complete definition of aggression which the Protocol contains. It is beyond question, therefore, from this text itself, as it is from the whole of the discussions of both Committees of the Assembly, that it is resort to war, nothing more and nothing less, which constitutes aggression; that against a state which resorts to war, and only against such a state, may "sanctions" be applied. A state may refuse arbitration, or it may fail to apply an arbitral award; but unless it also resorts to war, article 10

[1] Cf. article 4, § 6; and Chapter IV, *supra*.

does not take effect. So far as the definition of aggression is concerned, therefore, the matter is beyond all doubt, and every element of arbitration is excluded.

It may be said that in defining "aggression" simply as "resort to war," the Protocol is open to the criticism of the Special Committee of the Temporary Mixed Commission, that the firing of the first shot is not always decisive evidence of guilt. Its authors believed, however, that the arguments of the Special Committee were met by other provisions of the Protocol. The new system for the pacific and compulsory settlement of all disputes furnishes an absolute guarantee against a long-continued and aggressive policy of provocation or injustice by one state against its neighbours. Likewise, with the joint sanctions of the Protocol behind it, no individual state which may be weaker than its potentially aggressive neighbour, need seize in self-defence strategic points beyond its borders, for it no longer depends for its defence upon itself, but upon the international community as a whole. Thus both the political and the military contentions of the Special Committee were adequately met, and the authors of the Protocol did not hesitate to say that the firing of the first shot was the true act of aggression.

But if, under the Protocol, as under the Covenant, resort to war is the definition of aggression, there still remains the problem of knowing, when hostilities break out, which side has actually begun. Can any adequate or automatic test be found? The Second Assembly and the Temporary Mixed Commission had both failed in the attempt, and had left the matter respectively to the recommendation and the decision of the Council. In the Protocol could not something better be devised, something that would not lay upon the Council the same grave burden of decision?

The System of Legal Presumptions.

It is plain, at least, that arbitration could not help. If a refusal of arbitration does not furnish the definition

of aggression, such refusal cannot form the test; if a refusing state is not *ipso facto* an aggressor, its act of refusal cannot be a cause for sanctions. Baffled, therefore, in their first attempt to solve the problem, the Committee which drafted article 10 decided to give up the search for absolutely automatic tests, and to proceed instead by the method of presumptions. They agreed to lay down the signs or criteria by which the Council, if it were in doubt, could know which of two states involved in war was probably, if not quite certainly, to blame. They established, therefore, a series of presumptions, and provided that if war occurred, and if one of the states involved had committed any act within the terms of these presumptions, it would be deemed aggressor unless the Council otherwise unanimously decided. They believed that they had thus found, not one test, but a series of tests covering all the different situations that could arise, so that in no case would the Council, if it were in doubt, be without some definite criteria for its guidance. But these criteria were not really automatic tests, they were presumptions only; for this reason the Council was empowered to override them if it agreed unanimously that the innocence of a presumed aggressor had been proved.

"Arbitral" Presumptions.

What, then, are these presumptions of article 10, upon which, let it be said again, the whole system of the Protocol at a crisis might depend?

They are of two sorts, which may be roughly classed as *arbitral* and *military*. The arbitral presumptions are what remains of M. Herriot's original conception. They were inserted on the strength of his contentions, first, that if a state refused a settlement by arbitration, that fact in itself would show that its purpose was not justice, and that to say the least, it was aggressively inclined; and second, that if war occurred, it would almost certainly not be begun by a state which had accepted an arbitral award, because a state which had thus settled the substance of its claims

would have no motive for resort to war. On these grounds the authors of article 10 inserted the following "arbitral" presumptions :—

"In the event of hostilities having broken out, a state shall be presumed to be an aggressor unless a decision of the Council, which must be taken unanimously, shall otherwise declare: (*a*) if it has *refused to submit the dispute to the procedure of pacific settlement*, provided by articles 13 and 15 of the Covenant, as amplified by the present Protocol; or (*b*) to *comply with the judicial sentence or arbitral award or with the unanimous recommendation of the Council;* or (*c*) has disregarded a unanimous report of the Council, judicial sentence or arbitral award, recognizing that the dispute between it and the other belligerent state arises out of a matter which, by international law, is solely within the domestic jurisdiction of the latter state . . . ."

Every one will be agreed that the whole substance of these arbitral presumptions is in itself desirable from all points of view. It is desirable that states should submit their disputes to League procedure, and that they should carry out whatever decision may result. Indeed, Sir F. Pollock not only regards these presumptions as natural and right, but he even says that, in his opinion, there is no need for the safeguard provided by the Council's power of unanimous reversal.

"Refusal to enter on a pacific settlement . . . etc.," he says, "are the kind of actions that shall put a party in the wrong. All these are, on the face of them, wilful breaches of the peace; one is even tempted to think the reservation a piece of excessive caution."[1]

There can, in short, be no dispute that the purpose of these presumptions is a right one. Nor can there be objection to the effect which in most cases they will have; for they will make states very careful not to fail in their duty to submit disputes and execute awards lest, by any chance, a clash of arms should cause them to be outlawed by the world.[2] This might be a real and practical advantage which should not be lost from view.

[1] *Loc. cit.*, p. 12.
[2] Cf. speech by M. Henri Rolin, Minutes of the First Committee, p. 50 (Fifth Assembly Records).

But when all this is said, and when it is admitted that both in their purpose and in their probable effect the arbitral presumptions of article 10 are not open to objection, it still remains true that, in theory, they are wrong. No doubt a compulsory system for the pacific settlement of disputes furnishes a *moral* presumption of aggression which may be of value: for if a state refuses arbitration, its motives are rightly open to suspicion. But this moral presumption exists already without special mention in article 10; it is secured by other provisions of the Protocol; under its system the whole world will always know if a state has spurned arbitration, or has refused to carry out a verdict. And as a *legal* presumption the refusal of arbitration might lead to definitely wrong results. The system of legal presumptions is not, in general, a good one, for the reason that they are difficult to apply, and may not always give a true result. These objections certainly apply to the arbitral presumptions of article 10. For, even if a state has refused arbitration, it is at least possible, and might in some circumstances even be probable, that if war afterwards broke out it would not be to blame. A state, for example, for reasons of its own, might fail to send a lawyer to argue its case before the Court. This apparently would lay it under the first presumption quoted in paragraph (*a*) above.[1] Yet that failure in itself is not, in Sir F. Pollock's phrase, a "wilful breach of the peace," because the Court's proceedings will continue although it takes no part; and if war afterwards occurs, there will be at least a chance that the other party has begun, the more so since this other party would have a *prima facie* claim that the state "refusing arbitration" was aggressor, and so subject to the application of sanctions by the other signatory states. Similarly, there might be trouble with the second presumption (paragraph (*b*) above). It might conceivably occur that a state which was impatient about the non-fulfilment of an arbitral award by another party to a dispute, might resort to war against that party. Indeed, it might even be argued that the existence of these

[1] Cf. p. 117, *infra*.

presumptions would place temptation in the way of states of bad faith but technically in the right, to take advantage of unimportant errors by their opponents, to involve them in war and to defeat them with the assistance of the other signatory states. It may be said that such a hypothesis is so improbable as to border on the fantastic, and that if it occurred, the Council's power of reversing a presumption would almost certainly suffice. That is very likely true. But it must be remembered that there might be a genuine dispute as to whether an arbitral award had been carried out or not; that facts concerning the outbreak of hostilities might also be hidden in doubt; and that the course of the war might cause an immediate decision to be urgently required. In such a case, a situation of great difficulty might result, and one in which it is, at least in theory, possible that the arbitral presumptions might give a definitely wrong result by making that state the aggressor which had not begun the war. It must be remembered that a legal presumption is a rigid thing. Under article 10 these arbitral presumptions would always have to be applied, if it could be technically proved that they had arisen, on the demand of any one member of the Council, whether that member were of good faith or of bad. They thus involve a danger which might, in conceivable circumstances, be practical as well as theoretical—a danger which would be avoided if arbitration were omitted from article 10, and were left to furnish through the rest of the Protocol the purely moral presumptions which are of value.

"Military" Presumptions.

The truth is that, since aggression consists not in a refusal of arbitration nor in anything but resort to war, no rigid legal presumptions can be in theory right, except those which relate directly to acts of war, and which therefore help to show who fired the first shot. Such presumptions as these—they have been called "military" above—are obviously relevant and to the point, which arbitral presumptions are not. And the presumptions of this sort

which appear in article 10 are well conceived in all respects They are practicable, and in one way or another they cover every possible case with an automatic, or almost automatic, test

The presumptions of this class in article 10 are two —

(*a*) First, if war breaks out, a state is "presumed to be an aggressor if it has violated provisional measures enjoined by the Council as contemplated by article 7 of the present Protocol"

(*b*) Second, "if the Council does not at once succeed in determining the aggressor, it shall be bound to enjoin upon the belligerents an armistice, and shall fix its terms", and "any belligerent which has refused to accept the armistice, or has violated its terms, shall be deemed an aggressor"

It should be said that this second test is not strictly speaking a "presumption" An absolute duty is laid upon the Council to impose an armistice in every case where it has not been able on other grounds to come to a decision, this duty it *must* fulfil, it is not subject to the reservation attached to the presumptions proper, and the Council cannot even by unanimity agree not to carry it out [1]

But, apart from this important difference, this test of aggression by the imposition of an armistice will work like a presumption, and with the other "military" test by violation of provisional measures, it forms part of one obvious and logical whole Between them, they constitute not only the theoretically satisfactory, but the practically important part of the system which article 10 sets up They appear, apart from the arbitral presumptions, which in the following analysis are neglected, to cover every possible case of war which can arise in one of three ways.

First, hostilities may break out after a prolonged dispute which has evidently involved a risk of war, where complaints

[1] It is in fact what Austin called a "conclusive inference" but the Roman lawyers would have called it a *presumptio juris et de jure*, as distinct from a *praesumptio juris* ' in which proof to the contrary is admissible" Cf Austin on Jurisprudence §§ 694–700

of military preparation have been made and where the Council has been obliged to take provisional measures for the prevention of a conflict In this case, as argued in Chapter VI , it is almost certain that they will have taken the obvious and effective step of imposing a neutral zone upon the parties In that case, war cannot begin unless the zone is violated , and if it does begin, the mere presence of the troops of either party in the zone will, when reported by the impartial officers of the League, be the conclusive proof of guilt the Council needs And even if no zone had been established, the provisional measures taken by the Council would consist in some sort of demobilization which, if there were a risk of war, would likewise be under the control of officers of the League No state would venture to disregard such measures unless it meant to go to war , and if a breach occurred, it would be reported by the officers of the League either before or when hostilities broke out Again, therefore, there could be no doubt either that the presumption had actually arisen, or that the presumed aggressor was in fact the guilty state The Council will thus find again in its provisional measures the conclusive proof it needs to guide its action

Second, war may break out when there has been no previous dispute, or when, if there have been dispute proceedings, no complaint of warlike preparation has been made by either side, and the Council has not therefore taken provisional measures of any kind In such a case, it would almost necessarily begin with a surprise attack by one belligerent against the other If this be so, it will seldom be difficult to know which side was guilty of the attack The Council will almost certainly, in the words of article 10, " at once succeed in determining the aggressor " For this purpose, if there were no other presumptions, it would of course have to be unanimous , but in a case of a genuine surprise attack, there would be so little doubt that unanimity would as a rule be easily achieved

But third, the Council might have taken no provisional measures and it might not be able at once to determine the aggressor by unanimity In this case it would be obliged,

if war occurred, to impose an armistice upon the parties, and whichever party refused the armistice or broke its terms would be aggressor

Now it is sometimes said that in carrying out this duty of imposing an armistice the Council would meet with difficulties which at a moment of international crisis it could not overcome, and that this would make an armistice proposal useless for the purpose of deciding guilt for war It is hard to see where these difficulties lie It would appear, indeed, that the imposition of an armistice by the Council of the League would be much simpler than the establishment of the ordinary armistice by which every war in history has ended What are the various steps involved? First, no doubt can arise about the replies which the belligerents must make to the demand of the Council that they shall cease hostilities They must say yes, or no Either they accept, in which case the armistice will follow, or else they refuse, in which case they are automatically and immediately aggressors Nor, second, should there be difficulty in the actual cessation of hostilities The disengagement of the armed forces at the hour named by the Council would be carried out under the control of adequate numbers of impartial officers appointed by the Council for the purpose If, during the disengagement, either party acted disloyally or infringed the terms which the Council had laid down in a way sufficiently grave to justify further action by the Council, the report of these officers would immediately and indisputably prove its guilt And, third, when hostilities had ceased, a neutral zone would be set up between the armed forces of the parties, under the control and supervision of the officers of the League War could not be begun again without the presence of troops within this zone and if it were begun, the presence of the troops of any party, reported by the officers of the League, would furnish complete and final proof of guilt

There would thus appear to be no danger that the Council could not easily arrive at a correct result if an armistice, when imposed, were either refused or not observed by a

belligerent state But it is true that the Council might have difficulty in imposing an armistice at all, if, at a moment of crisis, it had to act by unanimity For there might be serious disagreement among its members concerning the armistice terms which would be just, this disagreement might not be overcome by the fact that they would all be under an absolute obligation to act without delay, and, once again, a single state of bad faith could paralyse its action For these reasons, and to avoid the risk of a particularly dangerous deadlock, the Council is empowered by article 10 to "fix the terms, acting, if need be, by a two-thirds majority"

This is another serious derogation from the principle of unanimity But it is plainly a necessary derogation, and no state which is willing to accept the other obligations of the Protocol will dream of objecting to it To give the Council power to demand the cessation of a war immediately it has begun, and to enable it at once to settle the terms that will make its demand effective, is only common-sense if you want to keep the peace Nor does the power to act for these purposes by majority involve any real danger of injustice in the terms which the Council may lay down These terms, of course, like provisional measures under article 7, must not affect the substance of the dispute from which war has resulted, but must relate exclusively to the technical questions involved in the cessation of hostilities Moreover, the armistice, once established, is intended to be permanent, it is not followed by any right of either party to start hostilities again, and any state therefore which accepts the Council's terms will be able, if it is attacked again, at once to call upon the help of the other signatory states It has thus a guarantee which must greatly outweigh any military risk or injustice which the armistice terms could possibly involve It would, indeed, as in article 7, have been more logical to let the Council act by simple majority, but a majority of two-thirds would no doubt in practice prove effective If so, it removes the only real difficulty that is likely to arise out of the Council's duty to impose an armistice

The Value of the Legal Presumptions

If the above argument is correct, it appears that what have been called the military presumptions of article 10 cover and cover effectively, at one stage or another, every possible outbreak of war Provisional measures, taken in the early days of a dispute, may give the Council a decisive test If no provisional measures have been taken and a surprise attack occurs, the fact of aggression may be so plain that the Council will at once be able unanimously to decide But if neither of these things occurs, it can still get decisive guidance within a few hours of the outbreak of hostilities, by exercising the duty and power conferred upon it to impose an armistice

The conclusions so far arrived at are therefore these —

1 That the "arbitral" presumptions contained in article 10, while in most cases they may be practically desirable and effective, are in theory irrelevant and confusing and open to the objection that they might conceivably lead the Council to a wrong decision, which the Council, if one state were of bad faith, would be unable to reverse

2 That what have been called "the military presumptions" are in theory relevant and sound, and that, in their practical application they could not lead the Council to a wrong result They are therefore safe, and are, moreover, in themselves, sufficient adequately to cover all possible cases of aggression

How far are the Presumptions "Automatic"?

There remains the question how far these presumptions in their working will be "automatic", how far, that is to say, they will in practice bind the decision of the Council

The theory of article 10 is that they should be automatic in the highest possible degree, and that they should leave the Council the least possible scope for the exercise of its discretion This theory was well expressed by the Belgian delegate, M Rolin, when he said in the First Committee that the purpose of the article was not altogether to pre-

vent "an intervention on the part of the Council, a task which appeared impossible," but to give the Council "such instructions as to its course of action as would prevent discussion" [1] The authors of the Protocol thought this desirable for reasons given in the Report It is there explained that discretion means voting, and that voting must either be unanimous or by majority But "to insist upon a unanimous decision of the Council exposes the state attacked to the loss of those definite guarantees to which it is entitled if one single member of the Council—be it in good faith or otherwise—insists upon adhering to an interpretation of the facts different from that of all his colleagues" The authors of the Protocol considered it impossible to expose "the very existence of a nation" to the hazard that one state of bad faith could paralyse the action of the Council at a moment of crisis But, on the other hand, they considered that it would be equally dangerous to rely upon a majority vote In that case, "the danger would be incurred by states called upon to furnish assistance and to support the heavy burden of common action, if they still entertained some doubt as to the guilt of the country against which they had to take action" [2]

The authors of the Protocol hoped to avoid this dilemma by the provision of automatic tests, which, subject to the Council's power of unanimous reversal, would dictate its decision, and the theory of the presumptions which have been described was that one or other of them would in every case furnish such a quasi-automatic test There would be no need for voting because "where a presumption has arisen and is not rejected by a unanimous decision of the Council, *the facts themselves decide* who is an aggressor, no further decision by the Council is needed, and the question of unanimity or majority does not present itself" [3]

There is no doubt then about the intention of the authors of article 10 It is shown not only by these passages in the Report, but by the whole discussions of the First Com-

[1] Minutes of First Committee, p 49 Fifth Assembly Records.
[2] Cmd 2273, p 23 [3] *Ibid*, p 25

mittee and its Sub-Committees But the theory on which they drafted is sometimes criticized It is objected that no presumption can be really automatic, that however plain the facts, there must always be some appreciation of them by the body which has to act upon them, that therefore the Council must in practice always decide whether the presumption has actually arisen or not The critics go further and even argue that since there is no special provision to the contrary, this decision must be taken by unanimity and that thus no sanctions could ever be employed until the Council had unanimously decided in its full discretion whether any given presumption furnishes a proof of guilt

This is a point of great importance, for were the objection correct, it would not only nullify the whole purpose of those who drafted article 10, but would reduce its terms to nonsense It must therefore be examined

In principle, the objection is plainly wrong Cases might easily occur where the presumption had so certainly arisen that no state could refuse to act without violating its obvious duty under article 10 In such cases the other members of the Council would be justified in holding that the facts had decided, and that they ought to disregard the alleged doubts of one of their number which did not concur

But it must be admitted that this principle will not always hold where the presumptions of article 10 may be involved Particularly with the arbitral presumptions, in spite of the views to the contrary expressed by some delegates in the First Committee,[1] there might well be cases where the facts would not at once decide What, for example, to take the not very helpful first presumption, is the meaning of the phrase "if it has refused to submit the dispute to the procedure of pacific settlement?" In what does refusal of submission consist? Is it merely, as suggested above, a failure to send an advocate to plead before the Permanent Court of International Justice? If so, would it be just, provided the other actions of a state which failed to plead were pacific, to make such

[1] Cf M Rolin, *loc cit*

a state subject in the event of war to the sanctions of the Protocol? And, if not, in what does refusal to submit consist? What is the meaning of the first presumption, and why was it inserted? On questions such as this, the Council might very well receive no decisive guidance from the facts, and might therefore have to determine the matter by other means Similarly, to take the second presumption, it might be a matter of dispute whether a judicial verdict or an arbitral award had been carried out or not There might be genuine doubt about the question For example, a year or two ago the Permanent Court of International Justice declared Poland to have violated her international obligations under her treaty for the protection of minorities Poland never refused or disputed the verdict, yet it was nearly a year before she could make, with the assistance of the Council of the League, the arrangements necessary to enable her to comply with it, and even then, there were some who claimed that she had not complied During that interval of time, had she, within the meaning of article 10 " refused to comply with the judicial sentence "? Clearly, in such a case, the facts would not of themselves settle the matter, and the Council again would have to find some other means by which it could decide If in such cases as these there is no other presumption that gives it guidance, and if therefore the Council must settle in its discretion, it must plainly do so by unanimity That is to say, if one of its members disputes that a presumption has arisen, and if it makes a case which shows that there is room for genuine doubt, the Council cannot act as if the presumption had arisen unless it immediately succeeds in convincing the objecting member that he is wrong Unless it thus secures unanimity, it cannot forthwith act on the last paragraph of article 10, and summon the signatory states to apply sanctions It must, on the contrary, treat the case as one which is, in the words of paragraph 3 of article 10, " apart from the cases dealt with in paragraphs 1 and 2 of the present Article ", and since it cannot itself " at once succeed in determining the aggressor," it is bound to fall back on

the device of imposing an armistice This, of course, if it does not stop the war, will mean a slight delay in determining the aggressor, but it is the course which the Council must evidently follow where an arbitral presumption is alleged, disputed and not proved to have arisen

The general conclusion drawn from the above argument concerning the arbitral presumptions, is this that in some cases, for example, where there was open defiance of the Court or of the Council, they might furnish an automatic test, but that in many cases there might be real and bona fide doubt as to whether a presumption had arisen, and then, unless unanimity could be immediately achieved, the Council would be obliged to fall back on the "military" tests provided by the rest of article 10 It may be noted, in passing, that this again supports the contention here put forward concerning the great practical utility of these military tests

It must next be considered to what extent these arguments apply to the "military presumptions" of article 10 In what degree will they furnish really automatic tests?

It is true that again there *might* be cases where the facts would not decide In such cases, as with the arbitral presumptions, a unanimous decision, or failing unanimity, the imposition of an armistice, would be required But there are grounds for thinking that with the military presumptions such cases will be rare In nearly every case either where provisional measures are applied, or where an armistice is established, a neutral zone would be imposed upon the parties And wherever there is a neutral zone, there is an absolutely automatic test for aggression for the reason given above—that war cannot be begun without troops entering the zone, and that, so soon as the troops of any party are known to be there, this by itself, if war afterwards breaks out, will decide the guilt A theoretical difficulty might perhaps arise if, one party having sent its troops into the zone, the other replied by doing likewise. In practice this contingency can be neglected, for the reason that the second state would have the strongest possible inducement to keep its troops outside

the zone, and so to fasten the guilt of aggression upon its enemy But even if in some cases no neutral zone were imposed upon the parties, if, that is to say, the Council confined its action to taking provisional measures of other kinds, even then the execution of such measures would be under the supervision of officers of the League, whose evidence concerning their infringement would be final It may, therefore, be concluded that while, even with these "military" tests, doubt is in theory not impossible, in practice they would in nearly every case be automatic, no decision by the Council would be required, article 10 would thus work as its authors intended that it should, and in doing so would never lead to an incorrect result

If this conclusion is accepted, it is another argument in favour of the general contention that it is the "military" parts of article 10 which are really of decisive value

Other Questions Arising out of Article 10

Two other important points arise out of article 10, the discussion of which is best postponed until sanctions have been considered

The first concerns the meaning of the words "resort to war", whether acts of violence which are not followed by a large-scale military attack must be held to be aggression, involving the penalty of sanctions, in other words, the problem of Corfu The second—not unrelated to the first—concerns the duty of the Council under the last paragraph of article 10 to "call upon the signatory states to apply forthwith against the aggressor the sanctions provided by the Protocol" The duty thus laid upon the Council is one of the essential elements in the system of the Protocol In its automatic and immediate working must lie much of the restraining power which the Protocol would have upon any government that was tempted to resort to war In principle, the meaning of the paragraph which creates this duty is unequivocally plain But it involves, or may involve, questions that are not easy. It is intended to be "automatic," but is there never to be

voting? If so, how must the Council decide upon the *kind* of sanctions which it must apply? Must it in every case of genuine aggression put the whole dread machinery of war in motion, although—as most experts believe—its application would hardly ever be required? If not, if the Council has discretion as to the means which it will use, how will it decide upon them? If it must vote, can it do so by majority or not?

These questions are difficult, and although the answers to them depend in a large measure on principles above explained, it is better to leave them over until the sanctions themselves have been discussed

In the meantime it may be said that article 10, whatever its obscurities, and whatever the criticisms to which it may be open, constitutes a great advance upon the Covenant, and an advance the importance of which is not less because it is often overlooked It provides what the Covenant lacks—a definite machinery for determining when aggression has occurred, and when, therefore, the *casus fœderis* has arisen, and it provides, as an essential part of this machinery, a summons by the Council of the League for the application of the sanctions, without which summons no coercive war-like measures of any kind can be begun It thus removes the dangers of the individual decision of guilt, and of the individual right to apply sanctions which under the Covenant remain, and which, with the partial alliances now existing in Europe, constitute a genuine danger to international peace The machinery established to this end may seem elaborate, but in reality it is fairly simple The opinion may be ventured that in practice it may be as simple as any machinery could be, and that in fact whatever else it also does, the Council will always simplify its task by resorting to the final and infallible test which an armistice provides By this means it may render academic the arguments about the working of presumptions which have been above discussed This one device, if it be rightly used, will by itself make the Protocol strong in preventing war and effective in deciding guilt if war occurs

In theory, no doubt, the whole system of article 10 might be made yet stronger and more effective if the principles which it contains were given some simple but logical extensions There seems no reason, for example, why the Council, if it had any reason to fear that a dispute might end in war, should not have the right to take provisional measures, even if there had been no proved infraction of the obligations of articles 7 and 8 Why should it not have the right at any stage of the proceedings, when it deemed it useful, to impose a neutral zone upon the parties, and why should not all the signatories undertake to accept such neutral zones and to facilitate the task of the officers whom the League might send to supervise them?

Again, why should not the Council be given an absolute duty to do what, as has been said above it will very likely be disposed in almost every case to do—that is, whenever war occurs forthwith to summon all the parties to accept an armistice? This need not even by a single hour delay the decision on aggression, if aggression has occurred, nor the call for sanctions It could not therefore weaken the restraining power of the sanction system—and in itself it is so obviously right, and in the public interest, that the suggestion might be carried even further Why should it not be left permanently in the hands of the acting President of the Council to send out the summons to cease hostilities? Legal and military experts might even be asked to consider whether a fixed code of armistice terms could not be prepared which at a moment's notice the acting President could himself adapt and propose to the belligerent states

Such developments as these might in form both improve and simplify the provisions of article 10 But even as they stand these provisions are a notable achievement There are many who believe that while human society remains the thing it is, it will be impossible to get rid of war They may be right But if any system can in present conditions be devised that will achieve this end, it must include the substance, if not the detail, of the system which this article sets up

CHAPTER VIII

SECURITY AND SANCTIONS

Does the Protocol add to the Burdens of the Covenant ?

THE provisions of the Protocol relating to security and sanctions have led to more genuine misunderstanding in Great Britain than all the others put together. This is partly due to the fact that these provisions are "legislation by reference," that their main purpose is to define more precisely obligations already contained in the Covenant, and legislation by reference is exceedingly confusing It is also due to the fact that the first reports which reached this country about the Geneva agreement on security alleged that the British delegates had given an undertaking to the French that if the Protocol were adopted, the whole British Fleet would be placed unreservedly at the disposition of the League This fantastic rumour, in spite of frank and conclusive official explanations, has been repeated at intervals ever since the Assembly closed, and has never yet been overtaken

The only change made by the Protocol in respect of sanctions lies in the extension of the obligations of the Covenant concerning the cases in which their application may be required Under the Protocol the obligation arises in *every* case of war, and this extension would, of course, be a most serious addition to the burden which sanctions must involve, if it added to the occasions when they were in fact applied But will it add to these occasions ? That is the vital question It was held by the authors of the Protocol that the compulsory settlement of all disputes will so diminish the causes of war as greatly to reduce the

occasions when it is even threatened, and that every strengthening of the sanctions against war—such as the Protocol contains—cannot, but serve to restrain aggressors, and thus to reduce the danger of its outbreak Even on this point, therefore, those who made the Protocol had grounds for holding that their extension of the obligation to take part in sanctions is outweighed by the diminution of the chance that the obligation will, in fact, arise

And apart from this extension of the contingent obligation, it is certain that the Protocol in no way adds to the undertakings of the Covenant to which great Britain by the most solemn of contracts has for the last five years been bound It only makes these undertakings more precise To anyone who reads the texts with care, this is not really open to dispute If it were, the following quotations should be decisive

In the Report it is stated that "no burden has been imposed on states beyond the sanctions already provided for in the Covenant" [1]

When he first accepted article 11 in the Third Committee, Mr Henderson made the following declaration

"It cannot be too strongly emphasized that everything in article 11" (at that stage it was, in fact, called article 7) "as already stated, was implied in article 16 of the Covenant We are remaining within the terms of the Covenant and we are undertaking no new obligations We do not see how any power which has signed the Covenant, and which intends to carry out honourably the pledges it has so given, can hesitate to subscribe to article 11" [2]

Commenting on this part of the Protocol, Sir F Pollock says

"Articles 10 to 13 do not purport to create any new substantive duty, nor do more than point the way that every loyal member of the League would wish to follow Loyal and effectual co-operation against the aggressor is the tenor of article 11, I find there only a more explicit declaration of what is already implicit in the Covenant" [3]

[1] Cmd 2273, p 33
[2] Speech to Third Committee, September 22nd, 1924.
[3] *loc cit*, p 15

If these opinions are accepted as decisive, the question in considering this part of the Protocol is not whether Great Britain ought to accept new burdens, but whether she ought to accept provisions which make her existing treaty obligations clearer and more precise, and which leave less doubt when they come into play

The purpose of this chapter is to set out the considerations which should be borne in mind when an answer to this question is prepared It may be useful at the outset to recall the two fundamental principles on which the authors of the articles on sanctions worked

The first was this that if there are sanctions at all, it is in the public interest and especially in the interest of those upon whom the burden of applying them would principally fall, that they shall be precise and strong, in order that every signatory state may know exactly to what it is committed, and in order that both the government and the people of any country contemplating war should realize the prospect that would face them if they followed their desire

The second was that for the repression of the international crime of war, all those measures of coercion must be taken which the fulfilment of that purpose may require, that, to maintain inviolate the undertakings of the Covenant and the Protocol, everything that is necessary—nothing more but nothing less—must be done

It is on these two principles that articles 11–15 are founded

General Obligations to Co-operate in Sanctions.

The system of security and sanctions which the Protocol creates consists of three separate parts

(1) General obligations to co-operate in military measures for the suppression of an aggressor, if such measures should be required These general obligations are accepted by every state which signs the Protocol,

(2) General obligations, similarly accepted by all signatory states, to co-operate in economic measures against an aggressor state,

(3) Special obligations, accepted mutually by certain signatory states among themselves, to give special military assistance to each other if any of them is attacked These special obligations, intended to achieve the purpose for which states have hitherto made military alliances, will be embodied in so-called " partial agreements " These partial agreements form an inherent part of the general system of the Protocol

These three parts of this system will be discussed in turn

When articles 11–15 are examined in detail, it will be seen that Mr Henderson was right when he said that their vital provisions are in the first two paragraphs of article 11 These paragraphs not only contain the binding general obligations to co-operate in military and economic sanctions, but they constitute the foundation of the Protocol system as a whole They are thus of great importance, because, as has been said *ad nauseam,* security is an essential part of the Protocol, without agreement on which the work of the Fifth Assembly must have failed It was, in fact, only because agreement was reached on these two paragraphs that those to whom security is the first of national preoccupations accepted the document as a whole

Something may therefore be said about the manner in which these paragraphs were drafted It was an open secret in Geneva that the French and British delegations first agreed upon them in a private meeting, and laid them as a joint proposal before the Sub-Committees and Committees of the Assembly, who accepted them unchanged The two delegations reached agreement in the following way

The French most of all desired assurance that the British Government and the rest of the Assembly shared their view that the Covenant has already imposed a duty on Members of the League to give *military* help against an aggressor if it is required They were anxious on the point because it had often been alleged that the Covenant only obliged the Members of the League to exert economic pressure and left them free to choose whether they would, or would not,

give military help The French also wanted a new and solemn declaration of the firm intention of the governments of Great Britain and the other Members of the League to fulfil the obligations of the Covenant in case of need, an assurance, that is to say, that these governments would not, if the Covenant were broken, try to find some way by which they could evade their undertakings

On both these points the British delegates were ready to meet the French desires They were more than willing to declare their conviction that the whole Covenant is founded on the principle that Members of the League must take whatever measures are required to suppress war in breach of its provisions, including, if need be, joint action by their military, naval and aerial forces In their view there could be no doubt that this is so They held that the published documents which show the origins of the Covenant prove it beyond dispute, and that were any other view accepted, not only would the Covenant be a feeble instrument, but article 16 would lose its meaning So far therefore the British could give satisfaction to the French They were willing to re-state in the plainest terms this interpretation of the Covenant, and to give an absolute pledge that in case of need they would support its obligations to the extent required

But they, on their side, had a preoccupation They wished to make it plain beyond all doubt that they could give no undertaking in advance as to the kind or amount of help which at a crisis Great Britain would provide In other words they could make no specific promise about the troops or ships which would be given if the Council called on the British Government for help The French were willing to accept this limitation on the British pledges, and on this basis they reached agreement

1 It will be seen that the first two paragraphs of article 11, in laying down the general obligations of the Protocol in respect of sanctions, embody this agreement They reassert what is in the Covenant, and more especially what is in article 16, and in doing so, make plainer and

more precise the meaning of the original terms They provide that when the Council demands joint action against an aggressor state, every signatory will be liable to apply "the sanctions of all kinds mentioned in paragraphs 1 and 2 of article 16 of the Covenant" The sanctions "mentioned" in the first two paragraphs of article 16 are economic, financial, military, naval and aerial There is no doubt, therefore, as to the kind of sanctions which the signatory powers promise to apply in case of need To make assurance doubly sure, paragraph 2 goes on to provide that these obligations "shall be interpreted as obliging each of the signatory states to co-operate *loyally and effectively* in support of the Covenant of the League of Nations and *in resistance to any act of aggression*"

2 It is plain, therefore, that any state which signs the Protocol will be bound, when war breaks out, to co-operate in taking whatever measures are required to induce the aggressor to submit But as to the kind or the amount of the assistance which must be given under these general obligations, the signatories accept no commitments in advance The first two paragraphs of article 11 in no way modify the second paragraph of article 16 of the Covenant under which it is the duty of the Council "to recommend to the governments what effective military, naval or air force the Members of the League shall severally contribute" This remains, under the Protocol as under the Covenant, the mechanism by which the co-operation of the signatory powers will be arranged The Council "recommends" the measures which it thinks would be effective, and the distribution of the burden among the different signatories which in its opinion would be just When each government receives this recommendation, it decides for itself if it can carry it out Of course, as Sir F Pollock explains, there can be no doubt that the Council would only "recommend" after consultation with all the governments concerned (whether they are Members of the Council or not, for, under article 4 of the Covenant non-Members must be invited to attend the Council for this purpose), and equally of course, these governments would

not commit themselves to active measures unless they were certain of support at home [1] A recommendation therefore would probably express a working agreement arrived at before it was made, but in any case, whether it followed prior agreement or merely prior consultation, any recommendation made by the Council would evidently carry great weight with every government to whom it was addressed

But while it would carry great weight, it would not be decisive A recommendation is a recommendation, its force is subject to obvious and important limitations There has been so much misconception on the subject that it may be useful to point out what in the case of Great Britain these limitations would in practice mean There can be no doubt, for example, though doubt has so often been expressed, that Great Britain would have absolute discretion to give the kind and amount of help which at the moment she felt able to give To begin with, she is a permanent Member of the Council, and the Council can only recommend by unanimity (this is specifically recognized on p 32 of the Report), she could therefore veto any recommendation of which she did not approve But even if she had agreed to a certain recommendation about the British share in sanctions, she would afterwards be free to explain that conditions had altered, that, for example, unexpected Imperial troubles had broken out and that for this or similar reasons the British contribution would be less than had previously been accepted Again, if we had accepted a recommendation that we should make a contribution of any sort, e g the dispatch of a proportion of our fleet to a certain part of the world, and if it afterwards appeared that to make this contribution would expose us to danger of attack elsewhere by other states whom we regarded as potential enemies, it would be open to us to stipulate that the help of our fleet could only be given provided similar assistance in kind and in amount were given by these other states It is therefore absolutely plain that under article 11 Great Britain would in no sense

[1] *loc cit*, p 13

be subject to the orders of a council of foreigners, that its liberty would be fettered in no way in which it is not already fettered by the Covenant, and that it would be free to regulate the assistance which it gave in accordance with its own Imperial needs In the words of the Report, "the gist of article 11, paragraphs 1 and 2 might be expressed as follows Each state is the judge of the manner in which it shall carry out its obligations, but not of the existence of those obligations" [1]

3 The next point which must be noted about the general obligations to take part in sanctions is supplementary to what has just been said about the effect of Council recommendations These obligations are subject to a most important limitation which will guide the Council in the proposals which it makes To the undertaking of paragraph 2 of article 11 that the signatory states will co-operate "loyally and effectively," there is added the proviso that this co-operation shall be "in the degree which its geographical position and its particular situation as regards armaments allow" This limitation was, in fact, added to meet the case of Denmark, before whose Parliament, at the time when the Protocol was being drafted, the Danish Government had laid a proposal for practically complete disarmament Incidentally, this fact is not without importance, for it disposes in advance of any allegations that may be made to the effect that acceptance of the Protocol would increase rather than decrease the armaments that must be maintained Such allegations were made without foundation against the Draft Treaty of Mutual Assistance, and it may be that they will be repeated against the Protocol But apart from this incidental point the limitation in itself is simply common sense It would be absurd to demand that Sweden should send an army to Peru, or provide forces out of proportion to her existing strength It is also of great practical value, for, as has been said, it supplies more or less definite criteria by which the Council can be guided when it "recommends," and by which the Members of the League can measure the commitments they have made

[1] Cmd 2273 p 31

4 When the Council has made its recommendation of the measures which each government should take, its formal duty under the Protocol in respect of sanctions will be done

> "The practical application of the sanctions," says the Report, "would devolve upon the Governments The real co-operation would ensue upon their getting into touch through diplomatic channels—perhaps by conferences—and by direct relations between different general staffs, as in the last war"[1]

The opinion may be ventured that this view is academic, that in practice the Council would be consulted in such negotiations, and that, in all probability, it would itself become the organ of consultation and would thus fulfil the functions which in the last war the Supreme Council of the Allies fulfilled

In the light of what is said above, the effect of the first two paragraphs of article 11 may perhaps be summarized as follows

They make plain beyond dispute the obligations of every signatory state in case of need to give military assistance to a state which is the victim of aggression, they provide what the Report calls "objective criteria," by which it can be known whether this obligation is being fulfilled or not—criteria which are theoretically vague, but which politically would be adequate enough, they oblige the signatory states to co-operate in sanctions whenever the Council may demand them, thus removing the quasi-liberty of Members of the League under the Covenant to judge for themselves, and perhaps to take no action

They do *not* establish any sanction for these obligations, in case of failure to fulfil them, they do *not* give to the Council any power to issue orders to the governments, nor in any other way do they go beyond the terms of the Covenant as it stands

[1] Cmd 2273, p 32

Before the subject of the general obligations of article 11 is left, a digression may perhaps be made to deal with a point of some importance that is sometimes raised It is said that even if all the above arguments be true, the Protocol does, nevertheless, strengthen article 16, as indeed it was intended that it should, and that since, contrary to all expectations when the League was made, there are still some Great Powers who are not Members of it, those who are Members ought to hesitate before they strengthen in any way whatever its coercive obligations It is even suggested that they ought to go back, rather than forward, and that Great Britain might usefully propose the amendment of article 16 to make the sanctions "facultative"—as it is euphemistically called—instead of binding The proposal has been so much discussed that it is necessary to inquire whether it is one which the British Government could honourably adopt Grave doubts on this point will occur to anyone who is familiar with the history of how the Covenant was made For the published documents prove beyond dispute that article 16 was, in its origin, in every sense an entirely British proposal It was, in fact, copied almost word for word from the Draft Convention prepared by the famous Phillimore Committee, which drew up for the British Foreign Office during the war the first governmental scheme for a League of Nations that was ever made The sanctions article of the Phillimore Convention was put forward by the British Delegation at Paris in almost, if not in exactly, the words of the original draft, and it was there accepted by the League of Nations' Commission almost untouched How little change was made can be seen by a comparison of the text of article 2 [1] of the Phillimore Convention with article 16 of the Covenant The essential words of the Phillimore article are these "The Allied states agree to take and to support each other in taking jointly and severally all such measures—military, naval, financial and economic—as will best avail for re-

[1] See Annex VIII The full Report of the Phillimore Committee has been published in *Woodrow Wilson and World Settlement*, by Ray Stannard Baker, Vol 3, p 67 *seqq*

straining the breach of Covenant" The fact that this draft was prepared and signed by a Committee which included not only Lord Phillimore and some other distinguished outside experts, but also Sir Eyre Crowe, the present head of the Foreign Office, and Sir Cecil Hurst, its Legal Advisor, gives it additional weight In view of this history of article 16, it is difficult to see how the British Government could now, after the League has had five years of effective existence, honourably propose to drop the substance of this vitally important obligation which they themselves proposed and carried through

And if it is not possible honourably to escape from the undertakings of article 16, is it not common sense to make these obligations as plain and definite as they can be? Isolation is an intelligible policy, but if isolation is impossible, if we are pledged to take part in sanctions, is not the argument for making these sanctions as strong as may be, almost overwhelming? That the Phillimore Committee thought so, is shown by this passage from their Report

"Article 2 contains the sanction proposed We have desired to make it as weighty as possible We [therefore made it unanimous and automatic and one to which each state must contribute its force, without waiting for the others "[1]

To the authors of the Protocol what was wise in 1918 seemed not less wise to-day

Economic Sanctions.

The provisions of paragraph 3 of article 11 and of article 12 relate to the second important part of the *general* system of security, that is to say, to the general obligations to co-operate in economic sanctions They are divided into two parts Those in paragraph 3 of article 11 are, so to speak, supplementary to military sanctions, while those in article 12 relate to economic sanctions proper

1 The provisions of paragraph 3 of article 11 concern those measures of economic co-operation which are necessary among states fighting in a common cause Like the first two

[1] *Vide ibid*, p 70

paragraphs of the article, they merely make more specific provision for carrying out obligations already contained in article 16 of the Covenant [1] The language used is wide The signatory states undertake " to give each other mutual support by means of facilities and reciprocal exchanges as regards the provision of raw materials and supplies of every kind, opening of credits, transport and transit "

This is followed by a further undertaking that they will " for this purpose take all measures in their power to preserve the safety of communications by land and sea of the attacked or threatened state " Again the language used is wide, and in some quarters has caused alarm But all the undertakings of this paragraph seem to be no more than a necessary consequence of the joint conduct of a common war by a number of allied states They are measures which are required to win a common victory And as to the special undertaking to preserve the safety of the communications of a state which is attacked, there is surely ground for thinking that if it should ever be necessary to carry out this task, Great Britain would gain by having every other country pledged to help in it In any case it must be repeated that these undertakings do not go beyond what is already implicit but indefinite in article 16 itself

2 The provisions of article 12 relate to economic sanctions proper, as distinguished from military sanctions Many competent authorities believe that economic sanctions would by themselves, without military action, be decisive against any aggressor state, if they were generally and effectively applied It is argued that the economic interdependence of the world is now so complete and so important to the well-being of every country, that very few peoples could without great loss sustain the severance of all their economic contact with the outside world, while most countries could only resist for so short a time that their governments would never face the prospect if they believed such severance would really be effected

This argument explains the provisions of article 12, the

[1] *Vide* Article 16, paragraph 3

purpose of which is twofold first, to create a conviction in the mind of any government contemplating war that the economic sanctions will, in fact, be put in force, and second, to increase their immediate effect if they ever have to be applied. With these ends in view, the article provides that the Council shall, through its competent organs, prepare "plans of action for the application of economic and financial sanctions against an aggressor state, and plans of economic and financial co-operation between a state attacked and the different states assisting it."

If the obligations of article 16 of the Covenant are to be taken seriously, it is plainly desirable that such plans should be made. The application of economic sanctions would be a most intricate affair. The measure of their success would depend on effective co-operation between many different nations at a moment of international crisis and confusion. Many difficulties might at such a time arise, which could be avoided or overcome by common plans prepared beforehand.

3. Such plans might in a particularly great degree increase the efficacy of an economic *boycott*, as distinct from a blockade, that is to say, of common "municipal" measures taken individually by each co-operating state to prevent all economic intercourse between itself and an aggressor, without active and coercive interference with his foreign trade. If a plan for this purpose, carefully prepared in advance, were adopted by all or nearly all important states, it might make boycott almost as effective as blockade. For if such a boycott were immediately applied by a large part of the world, avowedly only as a preliminary measure, and with the prospect, if the aggressor did not hasten to submit, of blockade, war, and reparations in the background, it would make trading with him so precarious as to paralyse his foreign commerce even with states that had preserved "neutrality." The development of plans for thus making boycott by common "municipal" action really effective is evidently wise, since it is vitally important to avoid the use of warlike measures whenever it can be done.

4. There is one other measure of coercion, half-way be-

tween military and economic sanctions, which might possibly be developed as a weapon in the hands of the Council, and for the efficacy of which plans prepared in advance would be required. This is pacific blockade, that is to say, blockade without the establishment of a legal state of war This was generally recognized by international lawyers in pre-League days as a valid measure short of war, though they were not in agreement as to the rights which could be legally exercised by the blockading state against neutral ships and commerce They were in agreement, however, on one important principle that ships captured and detained in pursuance of the pacific blockade could not be condemned and confiscated from their owners, but could only be sequestered There seems everything to be said for reviving and developing this institution as a weapon in the hands of the community of states against an international criminal It is plainly desirable to avoid creating a legal state of war whenever that can possibly be done, pacific blockade would be more stringent and would exert a greater pressure than simple boycott, it would avoid the disagreeable consequences of confiscation either of "enemy" or "neutral" property, and in every way it would interfere far less with the normal course of trade and commerce than any exercise of belligerent rights It might mean the preparation of a new body of rules for the international law that would be required, that in itself does not seem a fatal obstacle

5 Mention must also be made of the application by paragraph 4 of article 11 of economic sanctions to two states engaged in war, both of which are, under the Protocol, aggressors The paragraph is interesting because it very definitely marks in the text of the Protocol itself the distinction so constantly made in debate between the two sorts of sanction, military and economic, and because it demonstrates that they were intended by its authors to be in some cases independent of each other It is also a sensible provision in itself If two states insist on going to war, the other signatories of the Protocol could hardly stand aside On the other hand, it would be difficult

for them to declare war on both parties The application of economic sanctions will effectively localize the war, and would probably, in nearly every case, bring it to a quick conclusion For this operation, again, if it is to be effective, plans prepared beforehand are required

The brief and inadequate observations made above on the important subject of economic sanctions may perhaps serve to indicate the significance of article 12 No attempt can be made even to sketch the nature of the plans that will have to be prepared by the Council, plans for economic sanctions proper when every signatory state is obliged to participate, other plans when the Council is merely "proposing steps" to secure compliance with a verdict or award, plans for a state of war, others for when there is no such state of war, not to mention the plans for positive economic assistance to the state which has been aggressively attacked To describe the measures which each co-operating state will have to take under these plans—Enabling Acts, Trading with Enemy Acts, control over Customs, Excise, Posts, Banks and Financial houses, Shipping, and Insurance—would require a monograph They might necessitate not only a considerable body of national legislation by each individual signatory state, but also a new code of international rules If so, it may be suggested that the preparation of this code would be a useful task for the Commission which the Fifth Assembly appointed to consider the codification of international law

But perhaps enough has been said to recommend article 12 to everyone who desires to increase the power of the Covenant to restrain aggression without resort to warlike means

Partial Alliances, Security and Control.

So far the "general" obligations of the Protocol, by which every signatory agrees to take part in the necessary measures of military and economic coercion, have been described It has been said that these provisions are the

foundation of the whole system of security which the Protocol sets up If their reality were once seriously believed in by the generality of governments, their restraining power against aggression without doubt would be immense, for against such a world-wide combination as they would bring together, not the strongest power nor even a group of powers could in the long run hope to win

But general obligations, while vital for these purposes of preventing aggression and ensuring final victory for the League, do not alone and by themselves give guarantees against invasion In spite of them, a reckless aggressor, by swift and sudden blows at a selected victim, might overrun its country and inflict upon it disastrous and perhaps irreparable loss In other words, just because general guarantees are world-wide, they are open to the objection that they are slow and cumbrous The critics say with force that in modern war, attack will be sudden, rapid and on a colossal scale, that in consequence defence and the movement of the vast numbers of troops and arms required will be immeasurably difficult and complex, and that, therefore, from the military point of view, international help against invasion will be useless, unless it is given in accordance with plans which, like those of an ordinary military alliance, have been previously prepared For the making of plans for the movement, feeding and operation of each division, without which no troops could take the field, is a task that might require weeks if not months of preliminary work

Moreover it is further urged by the critics that such pre-arranged plans could not by their nature be made for every case of war that theoretically might arise amongst the signatory states They can only be made for special cases by previous negotiation among a limited number of governments acting together for a specific and restricted purpose Since therefore pre-arranged plans cannot be made for the application of general world-wide guarantees, the critics conclude their argument by saying that no scheme of general obligations can give military security at all comparable to that provided by the partial military alliances that exist

This criticism of the efficacy of "general" obligations

can be overdone, as indeed it was against the Draft Treaty of Mutual Assistance It neglects the immense coercive power of economic sanctions and the great and immediate value to the state attacked of financial and economic measures of support Even from the military point of view it can be pressed too far Experts admit that without pre-arranged plans both naval and aerial forces could operate in many cases with small delay and great effect But all the same the criticism is important both in itself and because it dominates the minds of the governments who fear invasion Indeed from the beginning it has been the chief obstacle to the League's efforts to prepare a scheme of security that would permit the carrying out of article 8 For long it seemed impossible to overcome It was the first and greatest difficulty at the Third Assembly, which after a month's debate found no hope of issue And for a large part of the succeeding year, it checked all progress in the Temporary Mixed Commission, until eventually a way was found to overcome it It was the great achievement of the Temporary Mixed Commission that, starting from rival plans based respectively on general and special guarantees, on the apparently conflicting principles, that is, of world-wide co-operation and private alliance, it welded these two plans into one consistent whole, in which private alliances became part of a general plan under effective League control Moreover agreement on this plan was obtained with no sacrifice of principle by either side, for private alliances lost no part of their efficiency for defence and yet became no more than one special means of rapidly applying a general system of security By this achievement the Temporary Mixed Commission established once for all the principle that, in the words of the Report, private alliances should be simply "the means for the rapid application of sanctions of every kind in a given case of aggression. They are additional guarantees which give weaker states an absolute assurance that the system of sanctions will never fail" [1]

Unless the Temporary Mixed Commission had established

[1] Cmd 2273, p 35

this principle, and had done so by a victory over stern French opposition followed by a great change in French opinion, the Protocol in all likelihood would never have been made Without this means of combining special and general guarantees, the Fifth Assembly would have failed on the vital point of security, for the states which now depend on the private alliances they have made would never have accepted the Protocol's provisions unless some adequate substitute for these alliances had been produced Much credit is therefore due to the Temporary Mixed Commission The Protocol does little but reproduce with important change of form the agreement which it ultimately arrived at in its Draft Treaty of Mutual Assistance Partial Alliances are absorbed and controlled just as they were in the Draft Treaty In some ways indeed the control of the Draft Treaty was more effective than that of the Protocol, the Council, for example, had the right to propose revisions —virtually the right to veto the terms—of draft alliances before they were completed But in other ways the control of the Protocol is the stronger For it not only contains the new system for the settlement of disputes, which gives assurances to those who hate alliances that they cannot be used to support aggressive policy, but also by article 13 it goes beyond the terms of the Draft Treaty The various provisions of article 13 are important and must therefore be taken one by one

1 Paragraph 1 of article 13 offers a new and alternative method of securing the objects which states seek in making private military alliances with one another It provides that undertakings may be given to the Council of the League, by which states may specify the military assistance, that is to say the number of divisions, ships or aircraft, which they would place in case of need at its disposal The language of the paragraph is peculiar

"The Council shall be entitled to receive undertakings from states determining in advance the military, naval and air forces which they would be able to bring into action immediately to ensure the fulfilment of [their] obligations"

Those who drafted this paragraph were moved partly by their

desire to provide a substitute for the system of military alliances, partly by the belief that the specific guarantees so furnished to the Council might be an important factor in determining the amount of disarmament to which the Protocol would lead, that according to the number and extent of the guarantees so given, higher or lower scales of armament could be proposed This expectation will be dealt with later on In the meantime it is of course plain that under this paragraph no state is *obliged* to give any undertaking to the League If it voluntarily decides to do so, it may in its discretion make its undertaking either general or limited to a special case or cases, for example, to cases where its neighbour states are victims of aggression It is also plain that if its undertakings were limited to special cases, detailed military plans for their application could be prepared beforehand without transforming them into obligations towards an individual state In form it would be simple The state in question would simply promise to take certain specific measures or to defend certain parts of given frontiers, if asked to do so by the Council, and the military plans required would be prepared by the General Staffs concerned at the Council's express request

These undertakings, therefore, constitute what their authors intended they should be a definite substitute for military alliances, designed to achieve the same purposes, but not open to the same objections The conception is new, but it does not seem impracticable

2 The second paragraph of article 13 establishes the League's control over all partial alliances that exist, or that will be made hereafter Again the language is peculiar but the meaning plain It provides that

> " As soon as the Council has called upon the signatory States to apply sanctions, as provided in the last paragraph of Article 10 above, the said States may, in accordance with any agreements which they may previously have concluded, bring to the assistance of a particular State, which is the victim of aggression, their military, naval and air forces "

This means that no alliance can be applied and no military

action taken in pursuance of it, until the Council has demanded sanctions It is sometimes objected that the language is not plain, and that to give to it this interpretation is to fall into what logicians call the fallacy of the "undistributed middle" If there is doubt, it should certainly be removed, for the matter is of capital importance There was no doubt about the intention, the Minutes prove it beyond all question, in the speech of Mr Henderson already quoted, in dealing with the objections to partial alliances, he spoke of this paragraph as involving "the absolute prohibition of the enforcement of sanctions unless and until the Council has so decided" The intention of the paragraph therefore was that partial alliances should never be applied except under international control, and on behalf of international society as a whole They would thus become in a real sense simply a means of applying rapidly the general undertakings to which every signatory of the Protocol is pledged

This would appear to meet the objections usually urged against partial alliances, since, by the plain terms of the Protocol, misuse of an alliance would be aggression, and punishable as such by sanctions, while the fact of such misuse, if it occurred, would not be open to dispute

It is also right to note that every signatory of the Protocol has a certain indirect interest in the efficacy of partial alliances, since the more effective they are for the defensive purposes for which alone they can be made, the less onerous will be the burden of the general obligations which the Protocol involves

3 In spite of these advantages, however, and in spite of the facts that partial alliances already exist, that they are in no way controlled by the Covenant, and that they therefore constitute a real danger to the world at large, some critics of the Left object to the Protocol because it recognizes such alliances at all Their objection springs from their fear that the Protocol will create a military machine of immense power, which they do not believe the international institutions of the League would at a time of crisis be strong enough to hold in check But these critics

seem to neglect the fact that if they do nothing to control the alliances which exist, by absorbing them with adequate guarantees into a general system of security, the alliances, so far from ceasing to exist, will increase with every year that passes not only in number and in scope but in their importance in the national life of the states which make them, until they dominate again, as they did before the war, the international relations of the world

4 These general arguments in favour of the control of partial alliances by the Protocol apply with special force to the alliances which France has made with certain Powers of Eastern Europe, chief among them Roumania and Poland These alliances, frankly directed against joint or several aggression by the Great Powers of Russia and Germany, are, as things stand to-day, perhaps the most likely of all, sooner or later, to be called into play They are now subject to no international control except the loose and inadequate control which the Covenant provides The present French Government is willing to place them under the effective control of the Council of the League by accepting the terms of the Protocol above described The whole world has an interest that this opportunity of control should not be lost Great Britain will have a very special interest if she gives to France an undertaking to protect her from attack For such an undertaking would involve us, indirectly it is true, but none the less surely, in the results to which these alliances will lead If, for example, Russia attacked Roumania in order to recover Bessarabia, France would be obliged to fight, that, if any, would be the moment which Germany would choose to seek revenge on France, and so our obligations would arise The mere possibility of such events should make us seize the chance of ensuring that neither Roumania nor France should ever be responsible for such a war This can be done through the control of the Protocol over both policy and alliances, and this consideration ought to be a factor of importance in deciding what the British attitude shall be If we will not have the Protocol we must seek some similar scheme by which we can ensure that we shall only fight for France when she is the victim of genuine

aggression No other step could comparably reduce the gravity of the commitments we should incur by such a guarantee

5 Paragraph 3 of article 13 is also intended to meet objections that are brought against alliances that actually exist or may be made It provides that every partial military alliance must "remain open" to any Member of the League which desires to join it

No more remarkable concession could have been made by states which already have alliances against other states of whom they are afraid Some critics have asked how the provision can work in practice, how a state against whose possible aggression a guarantee was originally set up can be allowed to join that guarantee There is no precedent in history of an alliance of this sort, unless it be the Treaties made in 1870 by Great Britain with both Germany and France, by which she undertook to help either of them against the other to defend the neutrality of Belgium if it were infringed [1] But there seems no reason why in practice the provision should be difficult to work The conception of its authors appears to have been this Every alliance consists of two parts first, a permanent political undertaking, defining the *casus fœderis*, and in general outline the mutual assistance that would be rendered if the *casus fœderis* arose, and second, detailed military plans for the joint action which would be required The second part depends in no way essentially upon the first, it may be—as, indeed, in actual alliances it often is—changed and modified by the General Staffs of the allies, without any change of the political undertakings by which they are mutually engaged There is no reason why the admission of a non-original signatory to the political undertakings of an alliance should present great difficulty, even if the alliance when first made had been directed against aggression by itself It would involve an extension of the *casus fœderis*, but no change in its nature, since under the Protocol it must in any case be exclusively defensive For the action of the new ally if the *casus fœderis* arose, new and

[1] Cf Franco British and German British Treaties of August 9, 1870

special arrangements would be made between the General Staffs for each different situation which the political undertaking might involve

The plan is novel, but not therefore impossible Indeed it would provide an admirable *cadre* for the British-Franco-German alliance which has been proposed [1]

It is, then, fair to say not only that article 13 constitutes an important and indeed an essential part of the system of security which the Protocol sets up, but also that it institutes a control over partial military alliances which would destroy their menace to international peace If this be true, article 13 involves an important and a progressive change Indeed, Professor Shotwell, the distinguished American critic who has been quoted above, goes so far as to say that this change " is revolutionary, and that its effect will be deeply felt where the danger of war is greatest It will make," he adds, " for healthy international relations where there has been mutual suspicion and menace "

What Sanctions shall the Council apply?

There now arises the difficult question as to what kind of sanctions the Council should apply in different cases with which it may be called upon to deal Articles 11–15 provide for sanctions of all kinds , if many countries joined in the application of them all, they would mean disaster to the aggressor state Article 10 provides tests, which will sometimes at least be automatic, for determining when sanctions shall be applied , and it lays upon the Council an absolute duty when these automatic tests come into play, to demand their application Does this mean that the Council has no discretion, but that it must in every case of technical aggression apply the whole terrible machine, whether or not it may desire to do so ?

What, in other words, is the correct interpretation of the last paragraph of article 10, which provides that the Council shall call upon the signatory states to apply forthwith against the aggressor the sanctions provided by article 11 ?

Plainly it was not the intention of the authors of the

[1] Notably by Viscount Grey of Falloden

Protocol that all kinds of sanctions should be applied in every case of technical aggression That would violate the dictates of ordinary common sense, and the Protocol was made by practical politicians who knew the vast danger of all resort to war Their plain intention was that only those sanctions should be applied which were required to maintain the obligations of the Covenant and of the Protocol They intended that if a state, guilty of technical aggression, did not launch a large-scale military attack, diplomatic pressure should be first employed, then economic pressure, and so on, as the situation might demand, but that if a large-scale military invasion threatened the life or safety of the state which was attacked, the whole machinery of sanctions of every kind should be used at once to repel it

That this was the intention is shown by several passages in the Report For example

"It would frequently be *unnecessary to make use of all the means* which according to Paragraphs 1 and 2 of article 11 are, so to speak, available for resisting an act of aggression It might even be dangerous if, from fear of failing in their duties, states made superfluous efforts" [1]

And further on

"The Council decides which party is the aggressor and calls upon the signatory states to apply the sanctions This decision implies that *such sanctions as the case requires* shall be applied forthwith"

This is conclusive as to the intentions of the authors on the first point It is also plain that they intended that no sanction of any kind should be applied, even after aggression had indisputably taken place, until the Council called for it, in other words, that the Council had full discretion to ask only for those measures which it deemed appropriate, and could thus limit and control in every way the action which states individually might take This again is shown by other passages in the Report

But it must be admitted that the actual text does not very satisfactorily translate these intentions into legal language The main obligation of the signatories, which is in

[1] Cmd 2273, p 31

paragraph 1 of article 11, is clear enough The paragraph provides that when the Council calls for sanctions "the obligations of the signatories in regard to sanctions will immediately *become operative*" The signatories are thus *liable* to fulfil their duties directly the Council calls on them to do so, they are not forthwith bound, nor have they any right, to take all kinds of sanctions But in article 10 there is a genuine theoretical difficulty By its terms the Council is bound to recognize that aggression has occurred in certain situations that may arise, and when aggression has thus occurred it is by the last paragraph charged with an absolute duty, to which no reservation of any kind is made, to "call upon the signatory states to apply forthwith the sanctions provided by article 11" Thus, once a case of technical aggression has arisen, the Council would at no stage have any freedom it would not vote on the question of aggression nor would it vote on the demand for sanctions That this was the intention of the authors of article 10 is proved by the whole of their debates, they thought it vital in connection with the demand for sanctions again to avoid the dilemma already dealt with about unanimous and majority votes And if in defiance of the author's intentions, the paragraph were so interpreted that voting were required, it would in the absence of special provisions have to be by unanimity, which would undoubtedly defeat their purpose

But, on the other hand, if voting is excluded in all circumstances, how can the Council have any discretion to apply only those sanctions which the situation may require? Will not both the Council and all the remaining signatories be left at the mercy of one unscrupulous Member who might, for the worst of motives, demand the sanction of war when the others thought it was not needed?

The dilemma is difficult One possible line of interpretation may be suggested It may be argued that the duty of the Council under the last paragraph of article 10 is subject to its general duty to preserve the peace, that its specific task under the second paragraph of article 11 is to demand of the signatories the assistance necessary to

" support the Covenant of the League," and to resist " any act of aggression " , and that it has no right to go beyond this purpose, which automatically limits the sanctions for which it may call If this interpretation were translated into rules, it would amount to this

1 When the situation is such that there is no doubt as to the kind of sanctions which are required the Council must forthwith demand those sanctions , e g when the aggressor is conducting a large-scale military attack, it must ask for military help , it has no option and no voting is required

2 In the action which it takes, it must not go beyond what is plainly needed to resist the aggression that has taken place

3 If there is genuine ground for doubt, it must vote on the measures to be taken, since there is no other method by which a decision can be reached

4 If it has to vote, voting must be by unanimity, since there are no provisions to the contrary

5 Such voting must not be used to stultify the purpose of the Protocol

Even if this argument and interpretation are correct, no one can claim that they provide a satisfactory way of settling a point which is theoretically of great importance But it is fair for the defenders of the Protocol to ask if this point has any practical importance, if in its working any difficulty would arise ?

There is a strong case for those who say there would be no practical difficulty First, the Council is never likely to rush into war , a greater danger will lie in its reluctance to demand the measures that may really be required Second, if in a case of technical aggression a majority of the Council were against extreme measures and said so publicly to the world, this would so limit the prospect of the general application of such measures, that the minority who desired them would hesitate to press their claim There is thus an a priori case for saying that the Council will only ask for those sanctions which are in fact required But, third, even if the Council asked for measures that were too extreme, the importance of its error would be much diminished if in case

of war it imposed an armistice upon the parties, and summoned the aggressor to desist When aggression had occurred, such a summons to desist would not retard the sanctions, nor would it remove the aggressor's liability to make reparation for all damage that he did But it would singularly lighten the responsibility of the Council in deciding for what sanctions it should ask For if the aggressor accepted the armistice at once, the sanctions would forthwith cease and their application would only have been of a few hours' duration If, on the other hand, the aggressor did not accept the armistice, this would prove his nefarious intentions, and would justify whatever measures the Council might have applied

Finally, it may fairly be said that the experience of the League has shown that in the working of international institutions it is principles and not details that matter, and that many difficulties which in theory are formidable, do not in fact arise

Nevertheless, the text of the last paragraph of article 10 is not very satisfactory It is difficult to see exactly how it could be changed without defeating at least part of the purpose of its authors But if there is to be any revision of the Protocol, the whole of article 10 will deserve attention

Acts of Aggression short of War.

Another question mentioned in the last chapter and related to the point which has just been discussed, concerns the action which the Council should take if one state commits some act of force against another, but at the same time declares its intention not to resort to war The classical example of this situation was furnished in 1923 by Italy's seizure of Corfu

Generally, of course, such acts of force will fall within the terms of articles 7 or 8 of the Protocol, the Council will deal with them as there provided and in most cases the matter will so end This answers the question sometimes as to how the pacific blockade of one state by another would be dealt with under the Protocol, as it answers most difficulties of a similar sort

It is possible, however, that the acts of force might technically constitute aggression and that the state against whom they were directed might not only claim the right to resist by arms, but might demand the help of the other signatories for the purpose. Generally speaking, whether acts of force will give a right of self-defensive war to the state against which they are directed, must depend on whether they fall within the class of actions which under the old principles of international law were regarded as "acts of war" Seizure of territory was certainly so regarded, and therefore if the acts of force consisted in the seizure of territory and if the invading state did not at once withdraw when asked to do so by the Council, the defending state would have a right of self-defensive war But its right of war will only be a right to do what is required to recover its territory, unless the invading state resists, in which case it will also have the right to ask for sanctions If the defending state did more than was required to restore the *status quo ante*, if, for example, it marched into the territory of the invading state, it would itself be guilty of aggression

Practically, the important point is that articles 7 and 8 will almost certainly solve any difficulties with which the Council may be faced as the result of measures of coercion short of war

Termination of Sanctions and Reparations

Article 14 of the Protocol deals with the termination of sanctions, and article 15 with the reparations to be made by the aggressor

By article 14 the Council is alone "competent to declare that the application of sanctions shall cease and normal conditions be re-established" The purpose of this article is twofold first, to prevent signatory powers from making separate peace with the aggressor, second, to prevent them from conducting wars of revenge after the object of the sanctions has been attained

The sole right of the Council to stop sanctions must be of great importance in every case where forcible coercion has

been used It would be especially important when the aggressor immediately submitted to a summons to desist addressed to it by the Council on the outbreak of war But for this control there might be a danger that the signatory states which had just begun warlike measures would be indisposed to cease

Since the Council has the right to stop sanctions, it must also have the right to impose conditions on the aggressor state This will clearly give it a position of authority in negotiations for terms of peace between the aggressor and the signatory states which have taken action against it The Report says that it rests with the individual states which have taken action " to liquidate the operations undertaken ", but obviously over the terms of peace the Council will retain a considerable control, since it must ensure that they will not differ from the conditions which the aggressor state accepted when the sanctions ceased

It is sometimes said that the Council can only stop sanctions by unanimity, and that therefore, if one Member, for motives of revenge, desires to continue war beyond the point required, it can veto action by the Council as a whole The danger is unreal Once a considerable section of the Council declared for peace, the forces in their favour would be overwhelming Not only general opinion, but commercial and trading interests throughout the world would exercise great pressure for immediate settlement directly the aggressor accepted reasonable terms The co-operating states would calculate that the sooner their operations ended, the greater proportion of their total cost would the aggressor pay And since under the second paragraph of article 15 neither the territorial integrity, nor the political independence of the aggressor can be in any way affected by the terms imposed, the usual motives of conquest or desire for political control will not exist Unanimity, therefore, in this article has no terrors

It should be noted that this second paragraph of article 15, which the authors of the Protocol believed to be of great value, is a result of the general principle that changes of the *status quo* shall only be allowed by peaceful means

Objection is sometimes made to the fact that under article 15 the aggressor is liable to pay the whole cost of any operations undertaken against it, or any losses or damage caused by its aggression "up to the extreme limit of its capacity" The objection, of course, is based on the experience of "reparations" in the ex-enemy countries But whatever else may be said of the Reparation Clauses of the Treaties of Peace, it is certain that they have caused Germany and her allies to suffer most severely For this very reason, the restraining power of article 15 upon even the strongest potential aggressor should for many years be great

Will the Obligation to take Part in Sanctions be Observed?

Will the obligations of the Protocol to take part in Sanctions be in fact observed? Is the sense of international solidarity sufficiently developed to induce governments and peoples to make the sacrifices that may be required to maintain the peace in quarrels in which they have no direct concern? Above all, will they go to war to restrain an aggressor with whose cause they sympathize?

In these days of democratic government the working of *any* alliance must be in one sense uncertain, for the making of war lies in the hands of popularly elected parliaments, whose action cannot be foreseen On this ground some people believe that no military alliance of the old sort could now be relied upon The burden which such an alliance imposed upon the peoples of the allied countries might be immense, and the reluctance of the people of each ally to bear this burden will be increased if it doubts the justice of the cause which it is expected to support by war, and which it has to-day full liberty to judge

But there are grounds for thinking that a general alliance such as the sanctions of the Protocol involve has a better chance of fulfilment than an alliance of the old sort First, the burden of fulfilment would be distributed over far more states, and would therefore weigh less heavily on each Second, the obligation of the alliance only operates when an organ of impartial international justice has denounced an

international crime and demanded action for its repression The moral and political force of such an obligation will certainly be much greater than that of an ordinary alliance, under which one government promises to support another, however bad the cause for which it fights Under the Protocol the Council's demand for sanctions will engage the national honour of each signatory state, and recent history upholds the view that where the national honour is engaged beyond dispute and in the public interest, nations do not fail to do their duty Third, there is the practical consideration that under the Protocol many governments will have a material interest in taking part in sanctions, since some day they may be attacked themselves and will then require assistance, and governments cannot hope to receive what they will not give Finally, it must be remembered that if the Protocol gains the confidence of the world, *every* breach of its system will rouse a sentiment for the defence of international society against the state which violates the superior interest of the public welfare, however good its cause There can be no doubt that this sentiment is, in modern international life, a factor of real and growing power

CHAPTER IX

RELATIONS WITH STATES NOT MEMBERS OF THE LEAGUE WHICH DO NOT SIGN THE PROTOCOL ARTICLE 16

THE authors of the Protocol hoped of course that within the not too distant future it would be accepted and brought into force by all or almost all the nations of the world They could not expect that this would happen at once They therefore provided that invitations to the Disarmament Conference should be sent not only to signatory states, but also to " all other states whether Members of the League or not," and of course non-signatory states will take full part in the work of the Disarmament Conference, and will be free to join whatever plan for armament-reduction it may produce Again, since there would be an interval, which might be indefinitely prolonged, before its régime was universally accepted, the authors of the Protocol had to make provision for relations between signatory and non-signatory states These relations are dealt with in article 16

The scope of the article is narrowed by the fact that, for reasons explained in Chapter III above, it only applies to relations between signatories and non-signatories which are not Members of the League

Its terms are simple If a signatory state has a dispute with a non-signatory which is not a Member of the League, it provides that the non-Member " shall be invited, on the conditions contemplated in article 17 of the Covenant, to submit for the purpose of a pacific settlement to the obligations accepted by the states signatories " " The conditions contemplated in article 17 of the Covenant " mean merely

that the Council in inviting the non-Member state to accept the obligations of the Protocol, may impose such conditions as it "may deem just" This would cover stipulations in the nature of injunctions which the Council might think necessary to prevent continuing acts of injustice It should be noted that the Council has no freedom not to make the invitation to non-signatory states, once a dispute has been brought to its attention Whether it *must* do so on the sole demand of a non-signatory is obscure, it would appear that legally it should do so In view of recent events in Egypt the point is not wholly academic

If the non-Member state accepts the obligations of the Protocol, it is of course bound by the result to which the Protocol procedure leads and the dispute is settled If the non-Member state refuses and attacks the signatory state it becomes an aggressor under the Protocol and the signatory state has a right to the application by the other signatories of whatever sanctions may be needed to defend it

If the non-Member state refuses, but does nothing more, then the signatory state resumes its liberty of action and has a right to go to war against it It must be remembered that this right of war only follows a definite refusal of all means of pacific settlement of the dispute by the non-Member state, it is therefore not illogical It might lead to certain difficulties which have been discussed in Chapter III To what has there been said need only be added the consideration that the exercise of its right of war by the signatory state would be rendered difficult by the terms of the disarmament agreement which the International Conference will prepare For it could not exceed the limits so fixed without the express permission of the Council, and this permission would have to be given by unanimity The Council would certainly be reluctant to authorize an increase of armament for the purpose of facilitating a war which a non-signatory had not begun

Only two points of practical interest arise out of the relations between signatories and non-Member states, but they raise what are perhaps the most formidable objections so far brought against the Protocol The first concerns the

effect on "neutral" non-Member states of the application of sanctions, the second the maintenance of the existing *status quo* by force of arms against states which have never given their consent thereto

Non-Member States and the Application of Sanctions.

If sanctions are applied against any given state the signatory Powers taking part in them will in most cases desire to prevent all relations of every kind between the citizens of that state and the outside world This must usually affect the interests of non-Member states who are not taking part in the sanctions, and who may have close economic and other intercourse with the aggressor state Indeed, the first effect of the isolation of the aggressor will be greatly to increase the profits to be made out of commerce with its government and people and thus *pro tanto* to stimulate the desire of non-Member states to carry on their normal trade relations This being so, it is often asked whether the obligation of the Protocol to take part in sanctions whenever war occurs will not involve signatory states in great difficulties with non-Members, and whether in particular it will not bring Great Britain into conflict with the government of the United States Some people go so far as to assert that it is inconceivable that Great Britain should take part in League operations which might require us to apply a naval blockade to which the United States did not readily consent, and that to do so would mean a dangerous break with all the traditions of Anglo-American friendship and co-operation This argument requires examination

1 First, it is plain that it is an objection not so much to the Protocol as to the Covenant The Covenant creates the original obligation to take part in economic sanctions, including blockades if they should be required, the Protocol does no more than extend this obligation to every case of war. When this is pointed out, the critics usually reply that if article 16 involves such unexpected risks of friction with the United States, we should seek its revision and amendment without delay That this course is not one

which we can honourably adopt has been already argued

But it is true that the Protocol would add to the risks which article 16 is thus alleged to involve, if by extending its obligations to every case of war it increased the number of occasions on which sanctions were actually applied Again it has been already argued that aggressive and illegal war, with the consequent need for sanctions, is much more likely to occur under the system of the Covenant than under the stronger and more precise system of the Protocol, and that therefore the practical effect of the latter will be not to increase but to diminish the burden and the risks in which our acceptance of the Covenant has involved us

2 But, second, are the critics really justified in assuming that the application of sanctions would necessarily create friction with non-Member states? Is it quite certain that even if such states are not bound beforehand to co-operate in measures against aggression they will be hostile to the application of such measures against an outlaw state? The answer is by no means plainly what the critics assume it must be There are strong grounds for thinking that if a state were proved aggressor by the impartial processes of the League, with the moral authority of nearly all the countries of the world behind it, and if in the face of such impartial condemnation it persisted in aggressive violation of international peace, the opinion of the American people, for example, would favour strongly those who made sacrifices to restrain it The case only needs to be plainly stated to show how strong an appeal it would make to the citizens and government of any enlightened and democratic state Nor does this contention rest on supposition alone During the Corfu crisis in 1923 many well-informed American observers believed that if the League had desired to apply article 16 against Italy, the American government would have raised no objection, and that it would have had the overwhelming support of its public opinion behind it And under the Protocol, of course, the crime of an aggressor against whom sanctions were applied would be incomparably more flagrant than Italy's action at Corfu

Moreover, the method by which sanctions would be

applied would probably assist in securing the acquiescence if not the active co-operation of such non-Members as the United States It would not usually occur that extreme measures would be required at once The most stringent first step that is likely is an economic boycott In calling for such a boycott, the Council would state its grounds, and would invite the governments of non-Members like the United States to help the cause of peace and promote the rapid cessation of the sanctions by taking part in them, in other words it would invite them temporarily to prevent relations between their citizens and the aggressor state If many states were already applying the boycott, with the prospect of much stronger measures in the background, the large profits of trade with the aggressor might in any case be offset by its risks, this would increase the chance that such a government as the United States would not allow its citizens to help the aggressor to disturb the peace and to persist in the international crime of aggressive war

These arguments would apply with no less force if it were necessary to go beyond the boycott and apply an actual blockade There is every ground for thinking that the United States would at least passively accept, if it would not take an active part in, blockade measures against a state guilty under the Protocol of aggressive war

3 But third, even if all these arguments proved false in the event, even if the United States had no sympathy with the coercive measures that were taken, would this be a fatal obstacle to carrying out the sanctions? Would it necessarily create great friction between us and the United States? Would it be a dangerous break with our traditional policy in the past?

In this case, the problem of a boycott differs from that of a blockade To the execution of a boycott non-Member states could not possibly object True, it might increase the risks of their trade with the aggressor, for this reason it might achieve its purpose even if they did not help, but since it would in no way directly affect their rights, they could have no formal ground of complaint against its application.

But a blockade, supported as it might have to be by naval measures on the open sea, would directly affect the rights and interests of non-Member states Is it then unthinkable that we should apply it against the commerce of the United States? The first answer is that we have done it in the past, and only so recently as 1914, when we were at war and did everything in our power to stop American ships from trading with the enemy Our "traditional policy" is not then of great antiquity But it may be asked, would not the Protocol make new and serious difficulties which did not arise under blockade of the old description? It is not plain how it would Under the Protocol the states applying sanctions retain full belligerent rights under pre-League international law, this is expressly provided by the last sentence of article 10 Therefore, they could apply to the United States the rules of international law, and under these rules the United States would have those rights—no more and no less—which neutrals have The League blockade would not differ in nature from previous blockades its establishment would require the same declaration to the enemy, the same notification to neutral governments, and no doubt the same constant negotiation with them as to the way in which it was conducted But so far from being more difficult than previous blockades, it would appear that blockades under the Protocol would be simpler and easier in almost every way The fact that there would be hardly any neutrals besides the United States itself would definitely get rid of most of the things by which friction has hitherto been caused The law of contraband, for example, and the doctrine of "continuous voyage," which both caused so much trouble in the past, would simply cease to matter Nor has it yet been shown that in any single way the Protocol will add to the difficulties of the operation

Of course if there were any government like that of the United States which was likely to resent the application of a blockade, or to make protests against its conduct, the whole diplomatic resources of the Members of the League would be exhausted in attempts to find some friendly method of

accommodation, and no doubt the British Government would take the lead But the mere fact that such protests *might* be made is not ground enough for tearing up the solemn treaty obligations of article 16 The truth is that if blockade is ever right, it would be right under the Protocol, that it would be justified both in law and in morality, that non-Member states would be obliged by international law to recognize it, that the rules of existing international law would in large part at least fix their rights and duties, that the Protocol so far from increasing causes of friction between, for example, Great Britain and the United States, would actually do away with causes which have made trouble in the past and which would do so again if we were ever involved in war of the pre-League description, and, finally, that if a great part of the world were joined together in common action and common sacrifice to restrain a convicted aggressor state, it is almost inconceivable that the government of an enlightened and democratic people would allow its citizens to help the outlaw to persist in its resistance by sending it supplies, still less that it would actively protect them if they did so

Does the Protocol Stereotype the Status quo ?

The second practical question arising out of the relations of signatory and non-Member States concerns the stereotyping of the *status quo* which, it is said, the Protocol must inevitably cause Its provisions would prohibit war for whatever reason it might be begun However unjust the existing frontiers of the world may be, however indefensible the treaties and rules under which states live, no government will have the right of independent action to secure a change of any kind Not only that, but against any government that seeks to remedy what may be an intolerable injustice, the whole strength of the civilized community of states will be organized and applied Nor is the loss of this independent right of action compensated by any new political or legal right to secure change when it may be required, through the impartial institutions of the League On the contrary, there will under the Protocol be no means

of obtaining change of any kind except by the express will and consent of all the states concerned, so that states are guaranteed for all time in their possession of their present territories and rights, however bad morally their present title may be and to whatever unforeseen results their rights may in future lead Is it not unwise, it is asked, to give this world-wide guarantee, in particular, is it not unwise to give it at this moment, when the world, and especially Europe, is full of flagrant international wrongs that need redress? Above all, is it not midsummer madness to set it up against great states which do not accept the system of the Protocol, which are not Members of the League, which have not signed nor even recognized the Treaties which create the *status quo*, which indeed violently protest against them and claim as their own in law and justice territories which have just been wrested from them by military force? Is Great Britain seriously to pledge itself to fight the Russian people to keep Bessarabia forever in Roumanian hands? And even if a system of this kind is now set up, will it not be certain that its own inherent unreality will cause its breakdown when the crucial test is once applied?

These are formidable questions The points they raise may best be dealt with first in general principle and afterwards in their most difficult application, that of the problem of Russia and the Border states that have been carved out of what used to be her Empire

1 To begin with, it may be confidently said that this again is an objection not so much against the Protocol as against the Covenant itself Article 10 has never been taken very seriously in this country, but on the Continent it is universally regarded as the foundation of the League By its terms "the Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League." The language may be thought obscure, but the only intelligible interpretation which it can be given means the abolition of territorial or political change by means of force It is the abolition of conquest, or as it

has been phrased by M Rolin in the ablest study yet made upon the subject, " l'interdiction de réaliser des changements territoriaux par la violence " [1] This view of article 10 was, as M Rolin shows, accepted by the Assembly as a whole after most exhaustive deliberations on motions for its deletion moved by Canada and afterwards withdrawn, and from their conclusions no British delegation expressed dissent

2 But if there were not already the Treaty obligations of article 10, in what sense could it be held that the Protocol " stereotypes " the *status quo* ? It can only be said to do so because it abolishes altogether the right of aggressive war, and provides for joint action against the aggressor It only prevents, therefore, change by war or threat of war But it is surely fair to claim that of all methods of securing change war is incomparably the worst It might even be argued with some show of reason that, however it be begun, war always leads to more and worse injustice than it removes, and the evidence of much history would support this argument At the least it will be conceded that war, as a method of securing justice, is a precarious expedient, while in itself it is so terrible a scourge that many even of those who put this objection forward agree that in present-day conditions the worst conceivable *status quo* is better than resort to arms But if that be once admitted, the whole case against the Protocol falls straightway to the ground, for the only logical conclusion is that every effort must be made at whatever cost to do away with war, even if it be doubted whether such effort can in fact succeed

3 But the critics may agree to this conclusion and still hold that, though war must be avoided, a threat of war, a right to appeal to arms if justice be refused, will achieve the end they want It may be replied that if a right of war be kept, it will soon or late be used the critics cannot have the best of both worlds Moreover, it will not only be used in cases of the critics' choosing, but far more probably in circumstances where no one could defend it on any

[1] *Les Origines et l'Œuvre de la Société des Nations* Edited by P Munch Vol II, p 462

ground But apart from that, is it true that without its actual use an ultimate right of war will secure, or will even help towards securing, the changes in the *status quo* which justice may require? The Covenant already provides certain machinery designed to secure change by mutual consent, article 15, under which disputes "which aim at revision" can be dealt with by conciliation, article 11, under which a dangerous situation can be discussed even after League tribunals have declared existing legal rights, above all article 19, by which the Assembly is empowered to "advise the reconsideration by Members of the League of treaties which have become inapplicable, and the consideration of international conditions whose continuance might endanger the peace of the world". Will an ultimate right of war help to secure the mutual consent without which these provisions cannot work? Will states make concessions under the threat of force to which otherwise they will not agree?

It was argued in Chapter V that they will not, that so far from making governments amenable to reason, a threat of force produces identically the opposite effect The answer may be put more strongly still It is the threat of war, the danger of invasion, the necessities of military preparation and precaution which produce to-day most of the injustices which it is desirable to remove This is most true of those parts of Central and Southern Europe on the condition of which the critics chiefly found their case The perpetual menace of attack under which the governments and peoples in these regions live itself creates the military and militarist policies which give to frontiers their sinister significance, and create the dangers to future peace which the present *status quo* involves Get rid of the threat of war, therefore, demilitarize European society, end the reactionary and repressive policies which the general staffs dictate, and a great part even of this problem of the *status quo* will thus be solved

4 That, however, is only the negative part of the argument for the Protocol There remains the positive and constructive part

It must be admitted that it is not enough to get rid of war, it is not enough to establish order, with order must be reconciled the need for change If it were true that the Protocol would stereotype the *status quo*, that it would "dam up" the forces that make for change, its supporters would be few But its supporters believe that so far from damming up these forces, the Protocol will increase their power, and will divert them from the channel of war, where they are plainly dangerous, to the channel of political discussion and debate

The Covenant has already created the machinery which has been described for securing change by mutual consent It is rudimentary, perhaps, but it is founded on a new and vital principle the principle that the alteration of contractual rights contained in treaties shall be effected by general discussion of Members of the community of states on the basis of the general interests of society At the present stage of the development of international institutions this machinery can only work by consent of all the parties there is no government by majority But, it is said, will not this consent be impossible to obtain? Even if the threat of war be useless for the purpose, will not its removal only leave things where they are? In other words, will the new principle of article 19 lead to any practical result? Will the Assembly and the Council with no force behind them be able to exercise persuasive force enough to induce a state to sacrifice the letter of its legal rights against its apparent interest?

There are grounds for holding that they will, that the new principles of the Covenant are already bearing fruit, and that they hold promise for the future which justifies the highest hope He would be a bold man who said that no change in the *status quo* was taking place on the continent of Europe to-day In a hundred different ways the injustice of the Peace Treaties and the hardships that result from the new frontiers are being done away The organs of the League began the process By the system of Minority Protection under the auspices of the League the greatest wrongs which frontiers can inflict—

denationalization and political disenfranchisement—have been abolished almost at a blow [1] As the League control becomes effective, as the governments of the minority countries feel its power, so their policy is changed to suit the spirit of the times The change in Poland has been complete, after some years of reactionary repression, the Polish Government is now resolute to solve its minority problems on liberal lines and has taken most of the necessary steps to achieve its end The same could be said of other countries Bulgaria and Greece are two examples As a consequence, the tide of irredentism is receding, the minorities, now gathering their strength—they number forty million—in a single international organization, are founding all their action on the basic principle of loyalty to the state within whose frontiers they live The fact must be of deep significance to those who speak of the dangers of the present *status quo*

The Economic and Transit organizations of the League have started similar profound and growing tendencies of change Their Conventions on Customs Formalities, Railway and other transit, and on kindred subjects, are but the most obvious results of a movement of opinion that is breaking down the whole reactionary policy of economic isolation The process is only now beginning, but the results already achieved are beyond all expectation The new principle of international co-operation is taking root And the new conception which the governments are deriving from the League is backed by forces that are sometimes overlooked—international finance, international commerce, and the new power of democracy which in so much of Central and Southern Europe has only just been born It is not possible to measure how far these forces must increase the paper value of articles 11 and 15

And to the spirit of co-operation, to the expression which it receives in the whole organization and working of the League, and to the effect which it must have in ordinary international disputes, there must be added the formal quasi-legislative machinery of change which article 19

[1] It is estimated that in the Polish Sejm there will be, after the forthcoming election, at least 120 Minority deputies

provides It will be said that without the right to overrule the will of an individual state the Assembly will be powerless, that its "advice" will be advice and nothing more In theory that is true But in practice the opinion of the Assembly, formed after debate in full publicity, is already a weapon of considerable power With every year that passes, the Assembly, even more than the other organs of the League, is growing in strength and moral influence with such rapidity that it is fair to argue that in twenty years from now no state will be willing indefinitely to resist its unanimous or almost unanimous opinion If it were proved year after year that an existing treaty involved a real injustice, and if the Assembly repeatedly advised its reconsideration, it may be doubted if even the strongest or most obstinate of states would not make whatever concessions the public opinion of the world demanded

5 There is, moreover, another side to this contention Not only can it be argued as above that the machinery of the Covenant for securing change is already working well, and that it will work yet better as soon as Germany becomes a Member of the League, not only can it be said that before it will be put to serious tests it will have grown immeasurably in power, it can also be argued that no better machinery can be devised which any government at present would accept This proposition, indeed, is evident if it is clearly stated There is no reasonable hope that any government will agree that its existing treaty, territorial or other legal rights shall be overridden without its own consent Certainly the British Government would be the last of all to agree to such a thing The critics of the Left often forget that the British Empire beyond any other state is interested in the maintenance of the *status quo* Is it probable that we shall submit to foreign decision the rights of domestic jurisdiction over such questions as control of immigration? Or is it likely that any British Government would submit even such relatively simple territorial questions as those of Gibraltar, Malta, Cyprus, the Soudan?

What we will not accept ourselves we cannot impose on others It may be taken as certain that no nearer

approach to a formal legislative process for securing change than that contained in article 19 can be obtained to-day

6 But if this be so, must nothing more be done? Must every further effort to secure disarmament, security against aggression, the pacific settlement of disputes, be given up until a complete legislative process by majority vote has been evolved? Must the Covenant, emasculated by tendencious and violently disputed interpretations, remain for an indefinite time the last word of human wisdom in international affairs?

For what is the logical conclusion of the argument? If it is wrong to create a system to prevent the violation of existing rights by war, until those rights can be changed at will by legislation, it is equally wrong to apply any legal rights unless all the parties to any given dispute agree spontaneously to their application The most that can be justified is a process of conciliation, the obligatory jurisdiction of the Court is wrong, compulsory arbitration is wrong, the action of the Council is wrong when it seeks, as it always does, to settle disputes on the basis of any legal rights that may happen to exist The whole ideal of legal justice among states must be abandoned until a full-fledged constitutional federation has been set up

This is "doctrine" with a vengeance Happily it is doctrine which rests on false assumptions The great need of the present hour is not for change, it is for stability, not for the overriding of international obligations, but for their scrupulous observance Only so can the mutual confidence be created which will alone permit the ordered progress of international society Nor when this hour is past, when change becomes again a pressing need, is there cause to doubt that article 19 will suffice to meet the situation It may well be by then that its form will be developed, but whether it is or not is a secondary point For even now it is not too soon to say with confidence that in international institutions, even more than in national institutions, political forces outstrip the forms they use.[1] It may well

[1] It may fairly be pointed out that in "the British League of Nations" there is no more legal machinery for securing change than there is in

be that the less that is said of formal change, the freer and more complete will be the adaptation of legal rights to current needs What matters is that the forces which dominate in international politics should be those which make for peace, reconciliation, democracy, good government, not those which make for war, for armaments, for reaction of every kind

7 It is not these distant theoretical dangers that need make practical statesmen pause before they accept a system which involves a guarantee of the *status quo* against aggressive war It is rather the immediate application of the system to some of the existing situations which, as some think, already threaten war Of these undoubtedly the most alarming lies in the relations between Russia and the border states No one can predict how the present government of Russia will evolve, but whatever its development may be, it may at any time cease to be content with its present Western frontiers The Baltic states, the Eastern frontier of Poland, Bessarabia, all present problems that must disturb anyone who cares for future peace, and the critics are right to concentrate attention on this aspect of the guarantee which the Protocol involves For if it cannot be defended in the difficult cases, in the cases where it is most likely to be used, it is not really capable of defence at all

8 Under any system, Russia will be a grave danger to peace so long as she remains hostile and aloof There can never be security and mutual trust in Eastern Europe until she avails herself of the opportunity she has always had to apply for Membership of the League, and to found her policy on the principles of its Covenant There are many who think that nothing can so hasten her application as the general adoption of the Protocol It may be so In any case, if she does not come in, and if nothing is done to stabilize the situation further, it is not unreasonable to predict that sooner or later war may break out between Russia and, say, Roumania That possibility will quite certainly

article 19 of the Covenant The Imperial Conference has only the advisory rights which the Assembly would have But no one proposes that India should have a right to go to war against South Africa because there is no legal means by which the Empire as a whole can oblige South Africa to change its treatment of Indian citizens

and rapidly increase the scope and importance of the network of alliances which has already been built up If war comes, therefore, it will in all probability involve the greater part of Europe, if not indeed, as once before, the world at large It may fairly be doubted whether in such a situation Great Britain would stand aside, whatever her previous undertakings might or might not be

9 But in fact Great Britain has already abandoned isolation In the case supposed, she would be bound by the undertakings of the Covenant, and when the crisis came, she would honourably carry them out But the obligations of the Covenant, if a breach of Covenant occurs, as it almost inevitably would, are no more than those of the Protocol The effect of the Protocol will simply be to ensure that the obligations cannot arise until Roumania has offered pacific settlement to Russia and has undertaken to abide by the result That is a safeguard which once more must not be overlooked It must also be remembered that the Protocol cannot come into force at all until a scheme of disarmament has been carried out, and a system of mutual control set up If Russia joins in that scheme, as she will be invited to do, and as many good judges think it very probable that she may, the danger of war will be infinitely reduced Even if she does not join in, the change in the political atmosphere of all Europe will be profound, and Russian aggression by that very fact rendered more difficult

Moreover, it must be remembered that Roumania's treaty title to Bessarabia is not perfect, since Russia has not accepted it, and that neither she nor Russia has any decisive historical or ethnological claim to rule the province This helps to justify the view that no Roumanian government would long resist whatever recommendations the Assembly might make for the removal of injustice resulting from the *status quo*

10 There are also material considerations which it is right to note Russian aggression on the West is the most likely of all causes to bring the system of the Protocol into play But the burden of sanctions that would fall on Great Britain in such a case would be relatively light At first at all events we should evidently be called upon for naval help, while continental countries would have to co-operate

at once in land operations on a major scale Moreover, the burden which Russian aggression in the West would throw on us under the Protocol would evidently be far less than the burden of an ordinary war of alliances, which may well be the alternative

11 Further it is often assumed without reason that Russian aggression *must* be towards the West Recent indications do not support the assumption The orientation of her policy appears now to be more towards the East, and if she remains irreconcilable she may strike either East or West But Russian aggression in the East may threaten the safety of the British Empire in a dozen ways, during the 19th century fear of the Russian menace was one of the main motives of British foreign policy An instrument like the Protocol, which is a general guarantee, would bring us assistance which at a moment of crisis might be of incalculable value Even if, therefore, the Russian menace in the West might impose an additional burden, it would be balanced, if not outweighed, by the reduction of what might be our burden if there were Russian aggression against us or our interests in the East

12 But even when these considerations and many more have been taken into full account, it remains impossible to give a dogmatic answer to the question whether it is to Great Britain's interest to join in a general guarantee that would include the present frontiers of Eastern Europe For the answer depends on the view that is taken of the system of " private " war It is not possible to abolish some wars and allow others It is not possible to exclude the danger spots from a general system Either we must get rid of all " private " wars, and face the difficult cases which that will involve, or we must continue as we are The supporters of the Protocol believe that in the continuance of the system of private war lies the greatest of all dangers to the stability of the British Empire They also believe that if the world can be kept at peace for twenty years the institutions of the League will have power enough to solve by peaceful means whatever problems may then arise Those who agree with them will accept the Protocol and the responsibilities it might imply, those who do not will rightly hesitate

The Attitude of the Ex-Enemy Countries towards the Protocol.

Since the injustices of the recent Treaties of Peace are the foundation of the case usually made against a system which guarantees the *status quo*, it is not irrelevant to inquire what is the attitude towards the Protocol of those states which suffered by these treaties It must be remembered that opinion in these states is very much alive to the fact that the Protocol would stabilize the existing situation

1 The Austrian delegation at the Fifth Assembly was consistently favourable to the Protocol, and particularly to the total abolition of the right of war The Austrian Socialists are also warmly in favour of it

2 The Bulgarian Foreign Minister, Colonel Kalfoff, was a member of one of the Assembly Sub-Committees which prepared the first drafts of the Protocol, and signed the Protocol on behalf of his government before he left Geneva

3 The leader of the Opposition in the Hungarian Parliament, Count Apponyi, an ardent Nationalist, was a member of the sub-committee which prepared the " arbitral " clauses of the Protocol He was throughout an enthusiastic supporter of compulsory arbitration and of the abolition of the right of war, although he recognized the effect of this on the question of the *status quo* He had the whole-hearted support of his government

On November 30, 1924, Count Apponyi, in an article in the *Pester Lloyd*, expounding and defending the Protocol, wrote as follows

"The objection which might be raised from our point of view, that it stabilizes an international political state of things which we ourselves have no interest to maintain, cannot be regarded as well-founded The Protocol contains guarantees for the rule of law as against the rule of force , it is true that these guarantees benefit in the first place the established state of things, but they have no exclusive relation to that state of things, but rather to the rule of law as opposed to the principle of force That a state of things which we dislike will also derive benefit, as long as it exists, from those guarantees is an accident which cannot

be altered The remedy lies in the change of that political situation itself, and the circumstances for such a change will certainly not be worse if abusive power is being checked"

4 German opinion is harder to gauge, but the following facts are important

The German reply to the Council on the Draft Treaty of Mutual Assistance put forward proposals almost identical with the greater part of the Protocol, including the total abolition of the right of war

It was during the preparation of the Protocol that the German Government first announced that it was, in principle, anxious to join the League They also made it known that they would in any case attend the Disarmament Conference when it met

No member of the German Government has since expressed any objections to the Protocol on any ground, although a number of government declarations about the League have been made On January 30 Herr Luther, the German Chancellor, replying to a speech by the French Prime Minister on the problem of security in which the latter advocated very strongly the general adoption of the Protocol, declared that "he accepted on behalf of Germany M Herriot's programme of arbitration, security and disarmament" (*Times*, Jan 31, 1925)

Herr Wels, the German Socialist leader, spoke strongly for the Protocol at the recent meeting in Brussels of the Socialist and Trade Union Internationals The German delegation voted for a resolution urging its immediate adoption by the governments

In the Polish Sejm the Protocol was recently put to the vote and the Government made it a question of confidence, it was carried by the votes of the *German* Minority deputies

The attitude of the ex-enemy Governments is evidently of much importance in determining the value of the contention discussed above If they are content after full discussion to give up all right to alter the *status quo* by force, it is surely difficult for Great Britain to insist that they shall retain it

CHAPTER X

DISARMAMENT ARTICLES 17 and 21 AND ASSEMBLY RESOLUTIONS

THERE remain for consideration the provisions of the Protocol which relate to the reduction and limitation of armaments The decisions of the Fifth Assembly on this part of their problem are embodied in articles 17 and 21, and in the resolutions by which the Protocol was accompanied The effect of these articles and resolutions is as follows

"An International Conference for the Reduction of Armaments" is to be convened by the Council, and to this Conference all states, whether Members of the League or not, are to be invited

The Conference is to meet on June 15th, 1925, if, by May 1st of that year the Protocol has been ratified by a majority of the permanent members of the Council (i e by three of the four Great Powers in the League—Great Britain, France, Italy and Japan) and by ten other states The Protocol was regarded by its authors as the foundation of the work which the Conference will do, and they were not willing that the Conference should even meet until its provisions had been brought potentially into force by a large part of the world

The Council is to prepare "a general programme for the reduction and limitation of armaments" which it shall lay before the Conference It was intended that this "general programme" should be not merely a statement of the technical principles upon which a disarmament agreement can be founded, but also a practical application of these

principles in the form of a Draft Convention, laying down the scales of armament which the Council hopes that the various countries attending the Conference will agree not to exceed This " programme " is to be " communicated " to the governments invited to the Conference at least three months before it meets

For the drafting of this programme, the Council is to appoint a Preparatory Committee of representatives of each of its Members, assisted by experts whom it shall choose These experts are to be independent persons not representing governments, the Assembly hoped and intended that the Council would nominate those members of the Temporary Mixed Commission who in the past have led its work

When the Preparatory Committee has drawn up a draft programme the Council is to consider it, to amend it as it thinks fit, and to send it as its own proposal to the various governments This is the exact procedure adopted with great success when the Statute of the Permanent Court of International Justice was prepared It is clearly understood that the programme thus evolved shall be considered as the Council's programme, until its Members are agreed among themselves, therefore, no programme will be sent out to other states In preparing its programme, the Council is instructed by article 17 to take into account all undertakings with regard to sanctions which may be made by states under the first two paragraphs of article 13 This means that before it can make proposals for a definite scale of armaments, the Council will have to carry out complicated and probably prolonged negotiations about the amount of assistance which different states will undertake to give in case of need, and about the armaments which in view of these undertakings certain leading states will respectively accept There is no doubt that this part of its task will be as difficult as it is important As an obviously useful supplement to these negotiations, the Council is instructed by the Assembly resolutions to put the provisions of article 12 into immediate effect, and to prepare the plans for the application of economic sanctions which are there foreseen If comprehensive and workable plans were as a result agreed on before

the Conference met, it is plain that they would greatly strengthen the framework of the system of security on which its work was based

The Council will no doubt endeavour, though probably not in the early stages, to secure the help of the United States and Russia in the work of preparation It may be difficult to do so But President Coolidge has already given a pledge that his Government would attend the Conference itself, and there is therefore ground for hoping that it would also assist in the preliminary work, while so far as Russia is concerned, it can be claimed that Russian representatives have taken part in the earlier proceedings of the League concerning armaments, though certainly at a time when the Russian Government was in a less difficult mood than it is in to-day

Thus when the Conference meets, it will have a general plan for its consideration, and to this plan the Members of the Council, including four Great Powers, will be at least provisionally bound It may be that as the result of the Council's previous consultations other states will also be provisionally committed to the proposals which this plan contains Moreover, every signatory of the Protocol will be bound by article 17 to " participate " in the Conference The word " participate " is vague, but it clearly involves not only a legal obligation to attend the Conference, but a moral obligation of the strongest kind to make sincere endeavours to accept and carry out whatever plan the Conference may adopt

But when this has been said, it must be added that of course the Governments when they meet in Conference will be free to amend the Council's plan in any way they like, to accept it or, if they feel compelled to do so, to reject it

The Conference itself by article 21 is to determine what shall constitute the technical " adoption of the plan for the reduction of armaments " which is required to bring the Protocol into force It will also have to lay down the necessary conditions and time limits for the execution of the plan of reduction by the various states which accept it —a very difficult matter—and the conditions in which the

plan may be declared by the Council to have been unfulfilled This last point is of much importance, since the non-fulfilment of the plan of disarmament will by paragraph 7 of article 21 render the whole Protocol null and void These thorny problems were not dealt with in the Protocol but were left for the Conference to settle, because they constitute an essential part of the problem of disarmament, and a considerable element in its technical difficulty Of course the Council will be expected to make proposals for their solution as part of its general programme, since no proposals for disarmament would be complete which did not lay down how they should be practically carried out or the circumstances in which they must be deemed to have failed of execution

It was the intention of the Assembly that the Council should appoint the Preparatory Committee at its meeting in December 1924, in order that the Committee should draft the general programme in time for its despatch to the governments on March 15th, 1925 This time-table was rendered impossible of fulfilment by the Council's postponement of the question, at the request of the British Government, until its next meeting in March 1925 The delay need not be regretted It appears to mean postponement of the practical results to which the Protocol would lead but in fact the time allowed by article 17 was much too short No workable plan could have been prepared by the date it fixed

Such are the provisions of the Protocol on the subject of disarmament Only when they have led to definite acceptance of a plan of reduction by the Conference will the Protocol come into legal existence at all Until such a plan is adopted, ratifications, however numerous, will remain in a condition of suspended animation Not only so, but since non-fulfilment of this plan makes the whole Protocol null and void, it is only when disarmament has been actually carried out that the Protocol can become a definite and durable part of the public law of the world

This fact provides the first reply to those critics who say that the disarmament provisions of the Protocol constitute a weak basis for the practical work of the international conference, and that if the governments had had any serious intention to disarm they would have made a much more definite pledge than it contains. The governments could have made no stronger pledge of any kind, for if they do not disarm their whole work will come to naught. That fact will dominate the discussions of the Conference from the moment that it meets.

And the second reply to these critics is that the provisions of the Protocol merely apply a plan already imposed upon the Members of the League. Under article 8 of the Covenant the Members of the League recognize that the reduction of armaments is necessary, the Council is charged with a duty to "formulate plans for such reduction for the consideration and action of the several governments", these plans would obviously have to be considered and accepted at a general conference such as the Protocol proposes, and by paragraph 4 of the article it is only after they have been "adopted by the several governments" that "the limits therein fixed are not to be exceeded without the concurrence of the Council". Thus it was never expected by the authors of the Covenant that disarmament could be achieved at a single blow. They recognized that success was only possible through a procedure which by adequate preparation and negotiation would secure for the Council's "plans" the voluntary and whole-hearted consent of every government concerned.

It is indeed plain that these particular critics have no case at all, and that the provisions of the Covenant and the Protocol embody all that it is practically possible to do. It is usually forgotten by those who most desire it that disarmament is an immensely intricate affair. Its difficulties do not appear to those who only think of it in abstract terms. No doubt these difficulties have been in some degree obscured by the spectacular success of the Washington Conference of 1921. That success led many who did not analyse it to believe that inherently disarmament would

be a simple problem if the governments had the will to solve it It is even believed that the Washington success was preceded by no preparation or preliminary plan In fact nothing could be further from the truth The Washington Conference was prepared with diligent care, and its success was due to specially favourable conditions of various different kinds The whole resources of the American Government, with the unanimous and enthusiastic support of the American people, were thrown into its work It had to deal with only five countries, of whom four were in great financial straits It so happened that all their governments were willing to accept a ratio of naval strength based on the *status quo*—an immense political advantage Most important of all, it dealt only with naval armaments, which technically present a relatively simple problem For with naval forces various factors do not arise which complicate the problems of land and aerial forces For example, the peace strength of a navy hardly differs from its war strength, reserves either of men or weapons practically do not count, concealment of naval forces is quite impossible, naval weapons have no normal use for peaceful purposes, measurement and comparison of strength is easy, both by the test of total tonnage and by the comparable " units " of strength which the various categories of fighting ships provide [1] For these reasons the Washington Conference, after much preparation and long negotiations, was able to solve part of the limited and relatively simple problem with which it dealt It is sometimes forgotten that its agreement only covered two categories of fighting units—capital ships and aircraft carriers It failed altogether when it tried to deal with submarines, it made no attempt to deal with other categories, it failed over aircraft Even for its limited agreement subsequent ratification was not easily obtained It would be absurd to minimize the great importance of its work, but it would be equally absurd not to recognize its limitations In December 1924 Mr Wilbur, the Secretary

[1] The practical advantages which result from these differences are well illustrated by the fact that no disputes have ever arisen concerning the execution by Germany of the naval clauses of the Peace Treaty

of the American Navy, wrote a paper in which he said that there must be another conference to deal with types of craft not covered by the Washington agreement, because the increase of such types in different navies may destroy, or is even now destroying, the basic ratio of strength—the famous 5 5 3 2 2 —on which that whole agreement was built up

The success of the Washington Conference, therefore, was only partial And it is certain that this kind of partial success would not suffice to bring the Protocol into effect The problem which for this purpose the International Conference must solve is infinitely harder than the problem with which the delegates at Washington had to deal It must secure a plan which will be accepted, not by five governments but by nearly sixty This plan must cover, not a small part of one class of weapons, but the whole armed forces by land, by sea and in the air, of all or almost all the states which are invited to attend No world-wide conference will succeed unless it deals with the problem as a whole, for states which depend on one kind of military preparation will not accept reduction unless states which depend on other kinds will also agree to curtail the efforts which they make

And the difficulty of dealing with the problem as a whole is incomparably greater than the difficulty of dealing with a small part such as came within the scope of the Washington Conference On technical grounds alone some experts doubt whether any workable basis of agreement can be found They say that no government will freely accept the simple but drastic system of disarmament imposed on Germany and her Allies by the Treaties of Peace, under which every detail of man power, enlistment, training, organization, arms, transport, and equipment is laid down Some more elastic system being necessary, therefore, they declare that the technical difficulties will be very great How is the total strength of one country to be compared with that of another? How is the power of one weapon to be measured against the power of another? How are weapons to be limited at all? How can secret preparations

and secret stores of arms and ammunition be prevented? How are aircraft and gas to be dealt with? How can reserves be sufficiently controlled to prevent great divergence in the war strength of different powers as compared with the strength they are allowed respectively to maintain in time of peace?

Besides these technical problems there are political difficulties which a world-wide disarmament conference must overcome How shall it settle the ratio of strength of different powers? Shall it adopt the *status quo*? Shall it grant to each its maximum demands? Shall it adopt a fixed percentage of these maximum demands? Or on what other basis can its agreement to reduce be framed? What arrangement shall it make about the carrying out of disarmament provisions when they have been once accepted? How can it secure the effective co-operation of outside powers such as Russia and the United States? If Russia will not come in, can it do anything at all? These and other similar questions, which will occur to every one who thinks about the subject, are formidable indeed

Of course it is absurd to say that such difficulties as these cannot be overcome Every machine of human making can be controlled by those who made it But though they *can* be overcome, the difficulties are not less serious than they seem They would make the task of a disarmament conference quite hopeless unless its work were very carefully prepared before it met This is the conclusive justification, if any justification be required, for the procedure of preparation which the Protocol lays down

It may well be, indeed, that the inherent difficulties of disarmament would render the task of a general conference hopeless unless it were summoned by the League of Nations and unless it worked on the basis of the positive obligations which by article 8 of the Covenant the Members of the League have all assumed It is only by the constant pressure exerted by permanent international institutions, by the continued and systematic work which such institutions alone make possible, that success can be achieved in a matter so difficult as this The past history of the League's

efforts on the subject is proof enough of this contention It is probably true to say that no world-wide conference could even meet for the purpose of reducing and limiting warlike preparations without the Protocol or something very like it But the Protocol could never have been drawn up except through the permanent institutions of the League Had the preliminary work been done by the old machinery of diplomacy and special conference it would long ago have come to naught If it had not perished sooner, the rejection of the Draft Treaty of Mutual Assistance would have been its final blow It is therefore plain that the governments at the Fifth Assembly, if they did nothing else, at least rendered a service to the cause of disarmament by undertaking that their further efforts to execute the obligations of article 8 should be made through the machinery of the League

But if one condition of success is that the future work towards disarmament should be carried on through the institutions of the League, another is that the Protocol, or something very like it, should be accepted as the basis of what is done Enough has been said to show that if the Protocol creates, as it is intended through its various provisions to create, an atmosphere of moral and material security, there will be at least a reasonable hope of practical results The disarmament agreement which the Conference adopts may not mean at first a great reduction from existing scales of armament That will depend on the success of difficult negotiations first by the Council, as explained above, and then by the Conference itself, and on the efficacy of the plans for economic sanctions which the Council has already started to prepare [1]

But in any case the actual scale of armament which is adopted, the initial reductions that are agreed to, are relatively a secondary affair What matters is that *some* agreement should be made, that some limits should be accepted which the governments will not exceed For this by itself will achieve the first great purpose of disarmament by stopping for the future the competition in preparation

[1] By a decision of the Council taken on October 3rd, 1924

which so often in the past has led to war And it is reasonable to predict that once an initial agreement has been made further reductions will be a simple matter When the technical *cadre* of a general disarmament convention is in existence, when the ratio between different countries has been once established, mutual reductions in equal proportion should be easy to arrange As the new system builds up an atmosphere of security and a sense of mutual trust, the universal desire to lighten the burden of unproductive taxation will lead to further progress Initial reductions, therefore, are not of vital importance What matters now is that a great opportunity of making a beginning should not be lost, and that the forces gathered round the movement to disarm should not be allowed to dissipate

CHAPTER XI

CONCLUSIONS

An attempt has been made in the preceding pages to state the case for the Protocol as it stands It is no part of the purpose of this book to put forward alternative provisions to those which the Protocol contains That is not because there are not other ways in which its objects might be achieved No doubt there are other ways, and if in its present form it does not secure enough support to enable the Disarmament Conference to meet, the Sixth Assembly will discuss whatever amendments may by then have been proposed

That may mean delay But in a work of this importance all the time that is genuinely needed must be given No one will complain if the British Foreign Secretary once more asks the Council for a postponement when it meets in March, provided it is plain that the British Government is considering the problem with a determination that something shall be done It is that determination which is essential For things cannot any longer be left just where they are The Covenant has been proved a work of genius, but it leaves vital questions open which, in the interests of states who intend to honour their undertakings, must be settled. Nor can the League ever be the thing it should be until armaments have been limited and reduced Disarmament is a condition of its ultimate success, this has always been recognized from its earliest days neither Covenant nor Protocol was framed for a world distracted by competition in military preparation But disarmament can never be brought about unless general agreement can be reached

on the essential substance of all the various parts of which the Protocol consists Not for nothing does the Report end with the warning, printed in Italics, that "*there can be no arbitration or security without disarmament, nor can there be disarmament without arbitration and security*"

For this reason it is not possible to be content with the smaller incidental elements of progress to which the Protocol has already gained a very general consent the obligatory jurisdiction of the Permanent Court, the re-affirmation of article 16, the preparation of concrete plans for its immediate application It might be logical to proceed first by these important but more cautious steps But logic does not meet the needs of the present situation Our generation must get rid of the militarization of the world, and above all of Europe, which the preceding generation thrust upon it It is a deep-rooted and malignant disease for which palliatives do not suffice, and of which civilized society may die if it be not ended

There are many who ardently desire every object for which the Protocol was made, but who yet doubt whether it does not go too fast Its authors were not unaware of the greatness of their ambition "The Fifth Assembly," the Report declares, "has undertaken a work of world-wide political importance which, if it succeeds, is destined profoundly to modify present political conditions" That is true There is no political question—be it the relations of Europe with Russia, the Franco-German problem, the Balkan unrest, the immigration issue in the East, or even the naval base at Singapore—which would not be profoundly changed if the system of the Protocol were once set up Its authors knew that if many governments stood aside, their work, just because it was ambitious, must come to naught They took the risks which that involved, because they believed that the governments of the Members of the League in the five short years of its existence had learned to trust the international institutions through which they had already done so much And that is the essence of the matter Those who believe that international institutions can be

made and have been made to work, want now to go forward Those who doubt it, hesitate But the faith of those who know Geneva is sure, because they have seen that there, as elsewhere, man is a political animal

Annex I

ARTICLE 8 OF THE COVENANT OF THE LEAGUE OF NATIONS

The Members of the League recognize that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations

The Council, taking account of the geographical situation and circumstances of each State, shall formulate plans for such reduction for the consideration and action of the several Governments

Such plans shall be subject to reconsideration and revision at least every ten years

After these plans shall have been adopted by the several Governments, the limits of armaments therein fixed shall not be exceeded without the concurrence of the Council

The Members of the League agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections The Council shall advise how the evil effects attendant upon such manufacture can be prevented, due regard being had to the necessities of those Members of the League which are not able to manufacture the munitions and implements of war necessary for their safety

The Members of the League undertake to interchange full and frank information as to the scale of their armaments, their military, naval and air programmes and the condition of such of their industries as are adaptable to war-like purposes

Annex II.

RESOLUTIONS ADOPTED BY THE TEMPORARY MIXED COMMISSION ON DISARMAMENT, IN SEPTEMBER 1922

1 No scheme for the reduction of armaments can ever be really successful unless it is general

2 In the present state of the world, the majority of Governments would be unable to accept the responsibility for a serious reduction of armaments unless they received in exchange a satisfactory guarantee for the safety of their countries

3 Such a guarantee can be found in a general defensive agreement between all the countries concerned, binding them to provide immediate and effective assistance in accordance with a pre-arranged plan in the event of one of them being attacked, provided that the obligation to render assistance to a country attacked shall be limited in principle to those countries situated in the same part of the globe In cases, however, where, for historical, geographical, or other reasons, a country is in special danger of attack, detailed arrangements should be made for its defence in accordance with the above-mentioned plan

4 It is understood that the whole of the above resolutions are conditional on a reduction of armaments being carried out on lines laid down beforehand, and on the provision of effective machinery to ensure the realization and the maintenance of such a reduction

Annex III.

RESOLUTION XIV OF THE THIRD COMMITTEE OF THE THIRD ASSEMBLY

(*a*) The Assembly having considered the report of the Temporary Mixed Commission on the question of a general Treaty of Mutual guarantee, being of opinion that this report can in no way affect the complete validity of all the Treaties of Peace or other agreements which are known to exist between States, and considering that this report contains valuable suggestions as to the methods by which a Treaty of Mutual Guarantee could be made effective, is of opinion that

1 No scheme for the reduction of armaments, within the meaning of Article 8 of the Covenant, can be fully successful unless it is general

2 In the present state of the world many Governments would be unable to accept the responsibility for a serious reduction of armaments unless they received in exchange a satisfactory guarantee of the safety of their country

3 Such a guarantee can be found in a defensive agreement which should be open to all countries, binding them to provide immediate and effective assistance in accordance with a pre-arranged plan in the event of one of them being attacked, provided that the obligation to render assistance to a country attacked shall be limited in principle to those countries situated in the same part of the globe In cases, however, where, for historical, geographical, or other reasons, a country is in special danger of attack, detailed arrangements should be made for its defence in accordance with the above-mentioned plan

4 As a general reduction of armaments is the object of the three preceding statements, and the Treaty of Mutual Guarantee the means of achieving that object, previous consent to this reduction is therefore the first condition of the Treaty

This reduction could be carried out either by means of a general treaty, which is the most desirable plan, or

by means of partial treaties designed to be extended and open to all countries

In the former case, the Treaty will carry with it a general reduction of armaments In the latter case, the reduction should be proportionate to the guarantees afforded by the Treaty

The Council of the League, after having taken the advice of the Temporary Mixed Commission, which will examine how each of these two systems could be carried out, should further formulate and submit to the Governments for their consideration and sovereign decision the plan of the machinery, both political and military, necessary to bring them clearly into effect

(*b*) The Assembly requests the Council to submit to the various Governments the above proposals for their observations, and requests the Temporary Mixed Commission to continue its investigations, and, in order to give precision to the above statements, to prepare a draft treaty embodying the principles contained therein

Annex IV.

FIFTH ASSEMBLY

RESOLUTION ADOPTED BY THE ASSEMBLY AT ITS MEETING HELD ON SATURDAY, SEPTEMBER 6, 1924

The Assembly,

Noting the declarations of the Governments represented, observes with satisfaction that they contain the basis of an understanding tending to establish a secure peace,

Decides as follows

With a view to reconciling in the new proposals the divergences between certain points of view which have been expressed and, when agreement has been reached, to enable an international conference upon armaments to be summoned by the League of Nations at the earliest possible moment

(1) The Third Committee is requested to consider the material dealing with security and the reduction of armaments, particularly the observations of the Governments of the draft Treaty of Mutual Assistance prepared in pursuance of Resolution XIV of the third Assembly and other plans prepared and presented to the Secretary-General since the publication of the draft Treaty, and to examine the obligations contained in the Covenant of the League in relation to the guarantees of security which a resort to arbitration and a reduction of armaments may require

(2) The First Committee is requested—

(*a*) to consider, in view of possible amendments, the articles in the Covenant relating to the settlement of disputes

(*b*) to examine within what limits the terms of Article 36, paragraph 2, of the Statute establishing the Permanent Court of International Justice might be rendered more precise and thereby facilitate the more general acceptance of the clause

And thus strengthen the solidarity and the security of the nations of the world by settling by pacific means all disputes which may arise between States

Annex V

THE COVENANT OF THE LEAGUE OF NATIONS

[THE PREAMBLE]

THE HIGH CONTRACTING PARTIES

In order to promote international co-operation and to achieve international peace and security

by the acceptance of obligations not to resort to war,

by the prescription of open, just and honourable relations between nations,

by the firm establishment of the understandings of international law as the actual rule of conduct among Governments, and

by the maintenance of justice and scrupulous respect for all treaty obligations in the dealings of organized peoples with one another,

Agree to this Covenant of the League of Nations

ARTICLE 1 [MEMBERSHIP]

The original Members of the League of Nations shall be those of the Signatories which are named in the Annex to this Covenant and also such of those other States named in the Annex as shall accede without reservation to this Covenant Such accession shall be effected by a Declaration deposited with the Secretariat within two months of the coming into force of the Covenant Notice thereof shall be sent to all other Members of the League

Any fully self-governing State, Dominion or Colony not named in the Annex may become a Member of the League if its admission is agreed to by two-thirds of the Assembly, provided that it shall give effective guarantees of its sincere intention to observe its international obligations, and shall accept such regulations as may be prescribed by the League in regard to its military, naval and air forces and armaments

Any Member of the League may, after two years' notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal

ARTICLE 2 [EXECUTIVE MACHINERY]

The action of the League under this Covenant shall be effected through the instrumentality of an Assembly and of a Council, with a permanent Secretariat

ARTICLE 3 [ASSEMBLY]

The Assembly shall consist of Representatives of the Members of the League

The Assembly shall meet at stated intervals and from time to time as occasion may require at the Seat of the League or at such other place as may be decided upon

The Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world

At meetings of the Assembly each Member of the League shall have one vote, and may have not more than three Representatives

ARTICLE 4 [COUNCIL]

The Council shall consist of Representatives of the Principal Allied and Associated Powers, together with Representatives of four other Members of the League These four Members of the League shall be selected by the Assembly from time to time in its discretion Until the appointment of the Representatives of the four [1] Members of the League first selected by the Assembly, Representatives of Belgium, Brazil, Spain and Greece shall be members of the Council

With the approval of the majority of the Assembly, the Council may name additional Members of the League whose Representatives shall always be members of the Council, the Council with like approval may increase the number of Members of the League to be selected by the Assembly for representation on the Council [2]

The Council shall meet from time to time as occasion may require, and at least once a year, at the Seat of the League, or at such other place as may be decided upon

The Council may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world

Any Member of the League not represented on the Council shall be invited to send a Representative to sit as a member

[1] In September, 1922, the Third Assembly raised the number of non permanent Members of the Council to six

[2] *Article 4, as amended has the following clause inserted here* —

The Assembly shall fix by a two-thirds majority the rules dealing with the election of the non permanent Members of the Council, and particularly such regulations as relate to their term of office and the conditions of re eligibility

at any meeting of the Council during the consideration of matters specially affecting the interests of that Member of the League

At meetings of the Council, each Member of the League represented on the Council shall have one vote, and may have not more than one Representative

ARTICLE 5 [VOTING AND PROCEDURE]

Except where otherwise expressly provided in this Covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting

All matters of procedure at meetings of the Assembly or of the Council, including the appointment of Committees to investigate particular matters, shall be regulated by the Assembly or by the Council and may be decided by a majority of the Members of the League represented at the meeting

The first meeting of the Assembly and the first meeting of the Council shall be summoned by the President of the United States of America.

ARTICLE 6 [SECRETARIAT]

The permanent Secretariat shall be established at the Seat of the League. The Secretariat shall comprise a Secretary-General and such secretaries and staff as may be required.

The first Secretary-General shall be the person named in the Annex; thereafter the Secretary-General shall be appointed by the Council with the approval of the majority of the Assembly.

The secretaries and staff of the Secretariat shall be appointed by the Secretary-General with the approval of the Council.

The Secretary-General shall act in that capacity at all meetings of the Assembly and of the Council.

[1] The expenses of the Secretariat shall be borne by the Members of the League in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union.

ARTICLE 7 [SEAT QUALIFICATIONS FOR OFFICIALS IMMUNITIES]

The Seat of the League is established at Geneva.

The Council may at any time decide that the Seat of the League shall be established elsewhere.

All positions under or in connection with the League, including the Secretariat, shall be open equally to men and women.

Representatives of the Members of the League and officials of the League when engaged on the business of the League shall enjoy diplomatic privileges and immunities.

[1] *Article 6. This last paragraph as amended, reads —*

The expenses of the League shall be borne by the Members of the League in the proportion decided by the Assembly.

The buildings and other property occupied by the League or its officials or by Representatives attending its meetings shall be inviolable

ARTICLE 8 [REDUCTION OF ARMAMENTS]

The Members of the League recognize that the maintenance of peace requires the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations

The Council, taking account of the geographical situation and circumstances of each State, shall formulate plans for such reduction for the consideration and action of the several Governments

Such plans shall be subject to reconsideration and revision at least every ten years

After these plans shall have been adopted by the several Governments, the limits of armaments therein fixed shall not be exceeded without the concurrence of the Council

The Members of the League agree that the manufacture by private enterprise of munitions and implements of war is open to grave objections The Council shall advise how the evil effects attendant upon such manufacture can be prevented, due regard being had to the necessities of those Members of the League which are not able to manufacture the munitions and implements of war necessary for their safety

The Members of the League undertake to interchange full and frank information as to the scale of their armaments, their military, naval and air programmes and the condition of such of their industries as are adaptable to war-like purposes

ARTICLE 9 [PERMANENT MILITARY COMMISSION]

A permanent Commission shall be constituted to advise the Council on the execution of the provisions of Articles 1 and 8 and on military, naval and air questions generally

ARTICLE 10 [GUARANTEES AGAINST AGGRESSION]

The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled

ARTICLE 11 [ACTION IN CASE OF WAR OR DANGER OF WAR]

Any war or threat of war, whether immediately affecting any of the Members of the League or not, is hereby declared a matter of concern to the whole League, and the League shall take any action that may be deemed wise and effectual to safeguard the

peace of nations In case any such emergency should arise the Secretary-General shall on the request of any Member of the League forthwith summon a meeting of the Council

It is also declared to be the friendly right of each Member of the League to bring to the attention of the Assembly or of the Council any circumstance whatever affecting international relations which threatens to disturb international peace or the good understanding between nations upon which peace depends

ARTICLE 12 [DISPUTES TO BE SUBMITTED TO ARBITRATION OR INQUIRY]

[1] The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration or to inquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators or the report by the Council

In any case under this Article the award of the arbitrators shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute

ARTICLE 13 [ARBITRATION OF DISPUTES]

[2] The Members of the League agree that whenever any dispute

[1] *Article* 12, *as amended, reads* —

The Members of the League agree that if there should arise between them any dispute likely to lead to a rupture, they will submit the matter either to arbitration *or judicial settlement* or to inquiry by the Council, and they agree in no case to resort to war until three months after the award by the arbitrators *or the judicial decision*, or the report by the Council

In any case under this Article the award of the arbitrators *or the judicial decision* shall be made within a reasonable time, and the report of the Council shall be made within six months after the submission of the dispute

[2] *Article* 13, *as amended, would read* —

The Members of the League agree that, whenever any dispute shall arise between them which they recognize to be suitable for submission to arbitration *or judicial settlement*, and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration *or judicial settlement*

Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established, would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration *or judicial settlement*

For the consideration of any such dispute, the court to which the case is referred shall be the Permanent Court of International Justice, established in accordance with Article 14, *or any tribunal agreed on by the parties to the dispute or stipulated in any connection existing between them*

The Members of the League agree that they will carry out in full good faith any award *or decision* that may be rendered, and that they will not

shall arise between them which they recognize to be suitable for submission to arbitration and which cannot be satisfactorily settled by diplomacy, they will submit the whole subject-matter to arbitration

Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which if established would constitute a breach of any international obligation, or as to the extent and nature of the reparation to be made for any such breach, are declared to be among those which are generally suitable for submission to arbitration

For the consideration of any such dispute the court of arbitration to which the case is referred shall be the court agreed on by the parties to the dispute or stipulated in any convention existing between them

The Members of the League agree that they will carry out in full good faith any award that may be rendered, and that they will not resort to war against a Member of the League which complies therewith In the event of any failure to carry out such an award, the Council shall propose what steps should be taken to give effect thereto

ARTICLE 14 [PERMANENT COURT OF INTERNATIONAL JUSTICE]

The Council shall formulate and submit to the Members of the League for adoption plans for the establishment of a Permanent Court of International Justice The Court shall be competent to hear and determine any dispute of an international character which the parties thereto submit to it The Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly

ARTICLE 15 [DISPUTES NOT SUBMITTED TO ARBITRATION]

[1] If there should arise between Members of the League any dispute likely to lead to a rupture, which is not submitted to arbitration in accordance with Article 13, the Members of the League agree that they will submit the matter to the Council Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General,

resort to war against any Member of the League that complies therewith In the event of any failure to carry out such an award *or decision*, the Council shall propose what steps should be taken to give effect thereto

[1] *Article* 15 *The first paragraph, as amended reads* —

If there should arise between Members of the League any dispute likely to lead to a rupture which is not submitted to arbitration *or judicial settlement*, in accordance with Article 13, the Members of the League agree that they will submit the matter to the Council Any party to the dispute may effect such submission by giving notice of the existence of the dispute to the Secretary-General, who will make all necessary arrangements for a full investigation and consideration thereof

who will make all necessary arrangements for a full investigation and consideration thereof

For this purpose the parties to the dispute will communicate to the Secretary-General, as promptly as possible, statements of their case, with all the relevant facts and papers, and the Council may forthwith direct the publication thereof

The Council shall endeavour to effect a settlement of the dispute, and if such efforts are successful, a statement shall be made public giving such facts and explanations regarding the dispute and the terms of settlement thereof as the Council may deem appropriate

If the dispute is not thus settled, the Council either unanimously or by a majority vote shall make and publish a report containing a statement of the facts of the dispute and the recommendations which are deemed just and proper in regard thereto

Any Member of the League represented on the Council may make public a statement of the facts of the dispute and of its conclusions regarding the same

If a report by the Council is unanimously agreed to by the members thereof other than the Representatives of one or more of the parties to the dispute, the Members of the League agree that they will not go to war with any party to the dispute which complies with the recommendations of the report

If the Council fails to reach a report which is unanimously agreed to by the members thereof, other than the Representatives of one or more of the parties to the dispute, the Members of the League reserve to themselves the right to take such action as they shall consider necessary for the maintenance of right and justice

If the dispute between the parties is claimed by one of them, and is found by the Council to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report, and shall make no recommendation as to its settlement

The Council may in any case under this Article refer the dispute to the Assembly The dispute shall be so referred at the request of either party to the dispute, provided that such request be made within fourteen days after the submission of the dispute to the Council

In any case referred to the Assembly, all the provisions of this Article and of Article 12 relating to the action and powers of the Council shall apply to the action and powers of the Assembly, provided that a report made by the Assembly, if concurred in by the Representatives of those Members of the League represented on the Council and of a majority of the other Members of the League, exclusive in each case of the Representatives of the parties to the dispute, shall have the same force as a report

by the Council concurred in by all the members thereof other than the Representatives of one or more of the parties to the dispute

ARTICLE 16 ["SANCTIONS" OF THE LEAGUE]

[1] Should any Member of the League resort to war in disregard of its covenants under Article 12, 13, or 15, it shall *ipso facto* be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State, and the prevention of all financial, commercial or personal intercourse between the nationals of the covenant-breaking State and the nationals of any other State, whether a Member of the League or not

It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League

steps to afford passage through their territory to the forces of any of the Members of the League which are co-operating to protect the covenants of the League

Any Member of the League which has violated any covenant of the League may be declared to be no longer a Member of the League by a vote of the Council concurred in by the Representatives of all the other Members of the League represented thereon

ARTICLE 17 [DISPUTES WITH NON-MEMBERS]

In the event of a dispute between a Member of the League and a State which is not a Member of the League, or between States not Members of the League, the State or States not Members of the League shall be invited to accept the obligations of Membership in the League for the purposes of such dispute, upon such conditions as the Council may deem just If such invitation is accepted, the provision of Articles 12 to 16 inclusive shall be applied with such modifications as may be deemed necessary by the Council

Upon such invitation being given the Council shall immediately institute an inquiry into the circumstances of the dispute and recommend such action as may seem best and most effectual in the circumstances

If a State so invited shall refuse to accept the obligations of membership in the League for the purposes of such dispute, and shall resort to war against a Member of the League, the provisions of Article 16 shall be applicable as against the State taking such action

If both parties to the dispute when so invited refuse to accept the obligations of membership in the League for the purposes of such dispute, the Council may take such measures and make such recommendations as will prevent hostilities and will result in the settlement of the dispute

ARTICLE 18 [REGISTRATION AND PUBLICATION OF ALL FUTURE TREATIES]

Every treaty or international engagement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it No such treaty or international engagement shall be binding until so registered

ARTICLE 19 [REVIEW OF TREATIES]

The Assembly may from time to time advise the reconsideration by Members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world

ARTICLE 20 [ABROGATION OF INCONSISTENT OBLIGATIONS]

The Members of the League severally agree that this Covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof

In case any Member of the League shall, before becoming a Member of the League, have undertaken any obligations inconsistent with the terms of this Covenant, it shall be the duty of such Member to take immediate steps to procure its release from such obligations

ARTICLE 21 [ENGAGEMENTS THAT REMAIN VALID]

Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitration or regional understandings like the Monroe doctrine, for securing the maintenance of peace

ARTICLE 22 [MANDATORIES CONTROL OF COLONIES AND TERRITORIES]

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League

The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone The wishes of these communities must be a principal consideration in the selection of the Mandatory

Other peoples, especially those of Central Africa, are at such

a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience and religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League

There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilization, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above-mentioned in the interests of the indigenous population

In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge

The degree of authority, control, or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council

A permanent Commission shall be constituted to receive and examine the annual report of the Mandatories and to advise the Council on all matters relating to the observance of the mandates

ARTICLE 23 [SOCIAL ACTIVITIES]

Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League

(*a*) will endeavour to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organizations,

(*b*) undertake to secure just treatment of the native inhabitants of territories under their control,

(*c*) will entrust the League with the general supervision over the execution of agreements with regard to the traffic in women and children, and the traffic in opium and other dangerous drugs,

(*d*) will entrust the League with the general supervision

of the trade in arms and ammunition with the countries in which the control of this traffic is necessary in the common interest,

(*e*) will make provision to secure and maintain freedom of communications and of transit and equitable treatment for the commerce of all Members of the League. In this connection, the special necessities of the regions devastated during the war of 1914–1918 shall be borne in mind,

(*f*) will endeavour to take steps in matters of international concern for the prevention and control of disease

ARTICLE 24 [INTERNATIONAL BUREAUX]

There shall be placed under the direction of the League all international bureaux already established by general treaties if the parties to such treaties consent All such international bureaux and all commissions for the regulation of matters of international interest hereafter constituted shall be placed under the direction of the League

In all matters of international interest which are regulated by general conventions but which are not placed under the control of international bureaux or commissions, the Secretariat of the League shall, subject to the consent of the Council and if desired by the parties, collect and distribute all relevant information and shall render any other assistance which may be necessary or desirable

The Council may include as part of the expenses of the Secretariat the expenses of any bureau or commission which is placed under the direction of the League

ARTICLE 25 [PROMOTION OF RED CROSS]

The Members of the League agree to encourage and promote the establishment and co-operation of duly authorized voluntary national Red Cross organizations having as purposes the improvement of health, the prevention of disease and the mitigation of suffering throughout the world

ARTICLE 26 [AMENDMENTS]

[1] Amendments to this Covenant will take effect when ratified

[1] *Article 26, as amended, reads* —

Amendments to the present Covenant the text of which shall have been voted by the Assembly on a three fourths majority in which there shall be included the votes of all the Members of the Council represented at the meeting, will take effect when ratified by the Members of the League whose Representatives composed the Council when the vote was taken and by the majority of those whose Representatives form the Assembly

If the required number of ratifications shall not have been obtained within twenty two months after the vote of the Assembly, the proposed amendment shall remain without effect

The Secretary General shall inform the Members of the taking effect of an amendment

Any Member of the League which has not at that time ratified the

by the Members of the League whose Representatives compose the Council and by a majority of the Members of the League whose Representatives compose the Assembly

No such amendment shall bind any Member of the League which signifies its dissent therefrom, but in that case it shall cease to be a Member of the League

amendment is free to notify the Secretary General within a year of its refusal to accept it, but in that case it shall cease to be a Member of the League

Annex VI.

ARTICLE 36 OF THE STATUTE OF THE PERMANENT COURT OF INTERNATIONAL JUSTICE

The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in Treaties and Conventions in force

The Members of the League of Nations and the States mentioned in the Annex to the Covenant may, either when signing or ratifying the Protocol to which the present Statute is adjoined, or at a later moment, declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other Member or State accepting the same obligation, the jurisdiction of the Court in all or any of the classes of legal disputes concerning

(*a*) The interpretation of a Treaty,
(*b*) Any question of International Law,
(*c*) The existence of any fact which, if established, would constitute a breach of an international obligation,
(*d*) The nature or extent of the reparation to be made for the breach of an international obligation

The declaration referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain Members or States, or for a certain time

In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court

Annex VII.

ARTICLE 2 OF THE DRAFT CONVENTION PREPARED BY THE PHILLIMORE COMMITTEE

If, which may God avert, one of the Allied States should break the Covenant contained in the preceding Article, this State will become *ipso facto* at war with all the other Allied States, and the latter agree to take and to support each other in taking jointly and severally all such measures—military, naval, financial, and economic—as will best avail for restraining the breach of covenant Such financial and economic measures shall include severance of all relations of trade and finance with the subjects of the Covenant-breaking State, prohibition against the subjects of the Allied States entering into any relations with the subjects of the Covenant-breaking State, and the prevention, so far as possible, of the subjects of the covenant-breaking State from having any commercial or financial intercourse with the subjects of any other State whether party to this Convention or not

For the purpose of this Article, the Allied States shall detain any ship or goods belonging to any of the subjects of the covenant-breaking state or coming from or destined for any person residing in the territory of such State, and shall take any other similar steps which shall be necessary for the same purpose

Such of the Allied States (if any) as cannot make an effective contribution of military or naval force shall at the least take the other measures indicated in this Article

Annex VIII

PROTOCOL FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES

Animated by the firm desire to ensure the maintenance of general peace and the security of nations whose existence, independence or territories may be threatened,

Recognizing the solidarity of the members of the international community,

Asserting that a war of aggression constitutes a violation of this solidarity and an international crime,

Desirous of facilitating the complete application of the system provided in the Covenant of the League of Nations for the pacific settlement of disputes between States and of ensuring the repression of international crimes, and

For the purpose of realizing, as contemplated by Article 8 of the Covenant, the reduction of national armaments to the lowest point consistent with national safety and the enforcement by common action of international obligations,

The Undersigned, duly authorized to that effect, agree as follows

ARTICLE 1

The signatory States undertake to make every effort in their power to secure the introduction into the Covenant of amendments on the lines of the provisions contained in the following articles

They agree that, as between themselves, these provisions shall be binding as from the coming into force of the present Protocol and that, so far as they are concerned, the Assembly and the Council of the League of Nations shall thenceforth have power to exercise all the rights and perform all the duties conferred upon them by the Protocol

ARTICLE 2

The signatory States agree in no case to resort to war, either with one another or against a State which if the occasion arises, accepts all the obligations hereinafter set out, except in

case of resistance to acts of aggression or when acting in agreement with the Council or the Assembly of the League of Nations in accordance with the provisions of the Covenant and of the present Protocol

ARTICLE 3

The signatory States undertake to recognize as compulsory, *ipso facto* and without special agreement, the jurisdiction of the Permanent Court of International Justice in the cases covered by paragraph 2 of Article 36 of the Statute of the Court, but without prejudice to the right of any State, when acceding to the special protocol provided for in the said Article and opened for signature on December 16, 1920, to make reservations compatible with the said clause.

Accession to this special protocol, opened for signature on December 16, 1920, must be given within the month following the coming into force of the present Protocol.

States which accede to the present Protocol, after its coming into force, must carry out the above obligation within the month following their accession.

ARTICLE 4

With a view to render more complete the provisions of paragraphs 4, 5, 6, and 7 of Article 15 of the Covenant, the signatory States agree to comply with the following procedure —

(1) If the dispute submitted to the Council is not settled by it as provided in paragraph 3 of the said Article 15, the Council shall endeavour to persuade the parties to submit the dispute to judicial settlement or arbitration.

(2) (*a*) If the parties cannot agree to do so, there shall, at the request of at least one of the parties, be constituted a Committee of Arbitrators. The Committee shall so far as possible be constituted by agreement between the parties.

(*b*) If within the period fixed by the Council the parties have failed to agree, in whole or in part, upon the number, the names and the powers of the arbitrators and upon the procedure, the Council shall settle the points remaining in suspense. It shall with the utmost possible despatch select in consultation with the parties the arbitrators and their President from among persons who by their nationality, their personal character and their experience, appear to it to furnish the highest guarantees of competence and impartiality.

(*c*) After the claims of the parties have been formulated, the Committee of Arbitrators, on the request of any party, shall through the medium of the Council

request an advisory opinion upon any points of law in dispute from the Permanent Court of International Justice, which in such case shall meet with the utmost possible despatch

(3) If none of the parties asks for arbitration, the Council shall again take the dispute under consideration If the Council reaches a report which is unanimously agreed to by the members thereof other than the representatives of any of the parties to the dispute, the signatory States agree to comply with the recommendations therein

(4) If the Council fails to reach a report which is concurred in by all its members, other than the representatives of any of the parties to the dispute, it shall submit the dispute to arbitration It shall itself determine the composition, the powers and the procedure of the Committee of Arbitrators and, in the choice of the arbitrators, shall bear in mind the guarantees of competence and impartiality referred to in paragraph 2 (*b*) above

(5) In no case may a solution, upon which there has already been a unanimous recommendation of the Council accepted by one of the parties concerned, be again called in question

(6) The signatory States undertake that they will carry out in full good faith any judicial sentence or arbitral award that may be rendered and that they will comply, as provided in paragraph 3 above, with the solutions recommended by the Council In the event of a State failing to carry out the above undertakings, the Council shall exert all its influence to secure compliance therewith If it fails therein, it shall propose what steps should be taken to give effect thereto, in accordance with the provision contained at the end of Article 13 of the Covenant Should a State in disregard of the above undertakings resort to war, the sanctions provided for by Article 16 of the Covenant, interpreted in the manner indicated in the present Protocol, shall immediately become applicable to it

(7) The provisions of the present article do not apply to the settlement of disputes which arise as the result of measures of war taken by one or more signatory States in agreement with the Council or the Assembly

ARTICLE 5

The provisions of paragraph 8 of Article 15 of the Covenant shall continue to apply in proceedings before the Council

If in the course of an arbitration, such as is contemplated by Article 4 above, one of the parties claims that the dispute, or part thereof, arises out of a matter which by international law

is solely within the domestic jurisdiction of that party, the arbitrators shall on this point take the advice of the Permanent Court of International Justice through the medium of the Council The opinion of the Court shall be binding upon the arbitrators, who, if the opinion is affirmative, shall confine themselves to so declaring in their award

If the question is held by the Court or by the Council to be a matter solely within the domestic jurisdiction of the State, the decision shall not prevent consideration of the situation by the Council or by the Assembly under Article 11 of the Covenant

ARTICLE 6

If in accordance with paragraph 9 of Article 15 of the Covenant a dispute is referred to the Assembly, that body shall have for the settlement of the dispute all the powers conferred upon the Council as to endeavouring to reconcile the parties in the manner laid down in paragraphs 1, 2, and 3 of Article 15 of the Covenant and in paragraph 1 of Article 4 above

Should the Assembly fail to achieve an amicable settlement

If one of the parties asks for arbitration, the Council shall proceed to constitute the Committee of Arbitrators in the manner provided in sub-paragraphs (*a*), (*b*) and (*c*) of paragraph 2 of Article 4 above

If no party asks for arbitration, the Assembly shall again take the dispute under consideration and shall have in this connection the same powers as the Council Recommendations embodied in a report of the Assembly, provided that it secures the measure of support stipulated at the end of paragraph 10 of Article 15 of the Covenant, shall have the same value and effect, as regards all matters dealt with in the present Protocol, as recommendations embodied in a report of the Council adopted as provided in paragraph 3 of Article 4 above

If the necessary majority cannot be obtained, the dispute shall be submitted to arbitration and the Council shall determine the composition, the powers and the procedure of the Committee of Arbitrators as laid down in paragraph 4 of Article 4.

ARTICLE 7

In the event of a dispute arising between two or more signatory States, these States agree that they will not, either before the dispute is submitted to proceedings for pacific settlement or during such proceedings, make any increase of their armaments or effectives which might modify the position established by the Conference for the Reduction of Armaments provided for by Article 17 of the present Protocol, nor will they take any measure of military, naval, air, industrial or economic mobilization, nor, in general, any action of a nature likely to extend the dispute or render it more acute

It shall be the duty of the Council, in accordance with the provisions of Article 11 of the Covenant, to take under consideration any complaint as to infraction of the above undertakings which is made to it by one or more of the States parties to the dispute Should the Council be of opinion that the complaint requires investigation, it shall, if it deems it expedient, arrange for inquiries and investigations in one or more of the countries concerned Such inquiries and investigations shall be carried out with the utmost possible despatch and the signatory States undertake to afford every facility for carrying them out

The sole object of measures taken by the Council as above provided is to facilitate the pacific settlement of disputes and they shall in no way prejudge the actual settlement

If the result of such inquiries and investigations is to establish an infraction of the provisions of the first paragraph of the present Article, it shall be the duty of the Council to summon the State or States guilty of the infraction to put an end thereto Should the State or States in question fail to comply with such summons, the Council shall declare them to be guilty of a violation of the Covenant or of the present Protocol, and shall decide upon the measures to be taken with a view to end as soon as possible a situation of a nature to threaten the peace of the world

For the purposes of the present Article decisions of the Council may be taken by a two-thirds majority

ARTICLE 8

The signatory States undertake to abstain from any act which might constitute a threat of aggression against another State

If one of the signatory States is of opinion that another State is making preparations for war, it shall have the right to bring the matter to the notice of the Council

The Council, if it ascertains that the facts are as alleged, shall proceed as provided in paragraphs 2, 4, and 5, of Article 7.

ARTICLE 9

The existence of demilitarized zones being calculated to prevent aggression and to facilitate a definite finding of the nature provided for in Article 10 below, the establishment of such zones between States mutually consenting thereto is recommended as a means of avoiding violations of the present Protocol

The demilitarized zones already existing under the terms of certain treaties or conventions, or which may be established in future between States mutually consenting thereto, may at the request and at the expense of one or more of the conterminous States, be placed under temporary or permanent system of supervision to be organized by the Council

ARTICLE 10

Every State which resorts to war in violation of the undertakings contained in the Covenant or in the present Protocol is an aggressor Violation of the rules laid down for a demilitarized zone shall be held equivalent to resort to war

In the event of hostilities having broken out, any State shall be presumed to be an aggressor, unless a decision of the Council, which must be taken unanimously, shall otherwise declare

(1) If it has refused to submit the dispute to the procedure of pacific settlement provided by Articles 13 and 15 of the Covenant as amplified by the present Protocol, or to comply with a judicial sentence or arbitral award or with a unanimous recommendation of the Council, or has disregarded a unanimous report of the Council, a judicial sentence or an arbitral award recognizing that the dispute between it and the other belligerent State arises out of a matter which by international law is solely within the domestic jurisdiction of the latter State, nevertheless, in the last case the State shall only be presumed to be an aggressor if it has not previously submitted the question to the Council or the Assembly, in accordance with Article 11 of the Covenant

(2) If it has violated provisional measures enjoined by the Council for the period while the proceedings are in progress as contemplated by Article 7 of the present Protocol

Apart from the cases dealt with in paragraphs 1 and 2 of the present Article, if the Council does not at once succeed in determining the aggressor, it shall be bound to enjoin upon the belligerents an armistice, and shall fix the terms, acting, if need be, by a two-thirds majority and shall supervise its execution

Any belligerent which has refused to accept the armistice or has violated its terms shall be deemed an aggressor

The Council shall call upon the signatory States to apply forthwith against the aggressor the sanctions provided by Article 11 of the present Protocol, and any signatory State thus called upon shall thereupon be entitled to exercise the rights of a belligerent

ARTICLE 11

As soon as the Council has called upon the signatory States to apply sanctions, as provided in the last paragraphs of Article 10 of the present Protocol, the obligations of the said States, in regard to the sanctions of all kinds mentioned in paragraphs 1 and 2 of Article 16 of the Covenant, will immediately become operative in order that such sanctions may forthwith be employed against the aggressor

Those obligations shall be interpreted as obliging each of the

signatory States to co-operate loyally and effectively in support of the Covenant of the League of Nations, and in resistance to any act of aggression, in the degree which its geographical position and its particular situation as regards armaments allow

In accordance with paragraph 3 of Article 16 of the Covenant the signatory States give a joint and several undertaking to come to the assistance of the State attacked or threatened, and to give each other mutual support by means of facilities and reciprocal exchanges as regards the provision of raw materials and supplies of every kind, openings of credits, transport and transit, and for this purpose to take all measures in their power to preserve the safety of communications by land and by sea of the attacked or threatened State

If both parties to the dispute are aggressors within the meaning of Article 10, the economic and financial sanctions shall be applied to both of them

ARTICLE 12

In view of the complexity of the conditions in which the Council may be called upon to exercise the functions mentioned in Article 11 of the present Protocol concerning economic and financial sanctions, and in order to determine more exactly the guarantees afforded by the present Protocol to the signatory States, the Council shall forthwith invite the economic and financial organizations of the League of Nations to consider and report as to the nature of the steps to be taken to give effect to the financial and economic sanctions and measures of co-operation contemplated in Article 16 of the Covenant and in Article 11 of this Protocol

When in possession of this information, the Council shall draw up through its competent organs —

(1) Plans of action for the application of the economic and financial sanctions against an aggressor State

(2) Plans of economic and financial co-operation between a State attacked and the different States assisting it,

and shall communicate these plans to the Members of the League and to the other signatory States

ARTICLE 13

In view of the contingent military, naval and air sanctions provided for by Article 16 of the Covenant and by Article 11 of the present Protocol, the Council shall be entitled to receive undertakings from States determining in advance the military, naval and air forces which they would be able to bring into action immediately to ensure the fulfilment of the obligations in regard to sanctions which result from the Covenant and the present Protocol

Furthermore, as soon as the Council has called upon the signatory States to apply sanctions, as provided in the last paragraph of Article 10 above, the said States may, in accordance with any agreements which they may previously have concluded, bring to the assistance of a particular State, which is the victim of aggression, their military, naval and air forces

The agreements mentioned in the preceding paragraph shall be registered and published by the Secretariat of the League of Nations. They shall remain open to all States Members of the League which may desire to accede thereto

ARTICLE 14

The Council shall alone be competent to declare that the application of sanctions shall cease and normal conditions be re-established

ARTICLE 15

In conformity with the spirit of the present Protocol, the signatory States agree that the whole cost of any military naval or air operations undertaken for the repression of an aggression under the terms of the Protocol, and reparation for all losses suffered by individuals, whether civilians or combatants, and for all material damage caused by the operations of both sides, shall be borne by the aggressor State up to the extreme limit of its capacity

Nevertheless, in view of Article 10 of the Covenant, neither the territorial integrity nor the political independence of the aggressor State shall in any case be affected as the result of the application of the sanctions mentioned in the present Protocol

ARTICLE 16

The signatory States agree that in the event of a dispute between one or more of them and one or more States which have not signed the present Protocol and are not Members of the League of Nations, such non-Member States shall be invited, on the conditions contemplated in Article 17 of the Covenant, to submit, for the purpose of a pacific settlement, to the obligations accepted by the States signatories of the present Protocol

If the State so invited, having refused to accept the said conditions and obligations, resorts to war against a signatory State, the provisions of Article 16 of the Covenant, as defined by the present Protocol, shall be applicable against it

ARTICLE 17

The signatory States undertake to participate in an International Conference for the Reduction of Armaments which shall be convened by the Council and shall meet at Geneva on Monday, June 15, 1925. All other States, whether Members of the League or not, shall be invited to this Conference

In preparation for the convening of the Conference, the Council shall draw up with due regard to the undertakings contained in Article 11 and 13 of the present Protocol a general programme for the reduction and limitation of armaments, which shall be laid before the Conference and which shall be communicated to the Governments at the earliest possible date, and at the latest three months before the Conference meets

If by May 1, 1925, ratifications have not been deposited by at least a majority of the permanent Members of the Council and ten other Members of the League, the Secretary-General of the League shall immediately consult the Council as to whether he shall cancel the invitations or merely adjourn the Conference to a subsequent date to be fixed by the Council so as to permit the necessary number of ratifications to be obtained

ARTICLE 18

Wherever mention is made in Article 10, or in any other provision of the present Protocol, of a decision of the Council, this shall be understood in the sense of Article 15 of the Covenant, namely that the votes of the representatives of the parties to the dispute shall not be counted when reckoning unanimity or the necessary majority

ARTICLE 19

Except as expressly provided by its terms, the present Protocol shall not affect in any way the rights and obligations of Members of the League as determined by the Covenant

ARTICLE 20

Any dispute as to the interpretation of the present Protocol shall be submitted to the Permanent Court of International Justice

ARTICLE 21

The present Protocol, of which the French and English texts are both authentic, shall be ratified

The deposit of ratifications shall be made at the Secretariat of the League of Nations as soon as possible

States of which the seat of government is outside Europe will be entitled merely to inform the Secretariat of the League of Nations that their ratification has been given , in that case, they must transmit the instrument of ratification as soon as possible

So soon as the majority of the permanent Members of the Council and ten other Members of the League have deposited or have effected their ratifications, a *procès-verbal* to that effect shall be drawn up by the Secretariat

After the said *procès-verbal* has been drawn up, the Protocol shall come into force as soon as the plan for the reduction of armaments has been adopted by the Conference provided for in Article 17

If within such period after the adoption of the plan for the reduction of armaments as shall be fixed by the said Conference, the plan has not been carried out, the Council shall make a declaration to that effect, this declaration shall render the present Protocol null and void

The grounds on which the Council may declare that the plan drawn up by the International Conference for the Reduction of Armaments has not been carried out, and that in consequence the present Protocol has been rendered null and void, shall be laid down by the Conference itself

A signatory State which, after the expiration of the period fixed by the Conference, fails to comply with the plan adopted by the Conference, shall not be admitted to benefit by the provisions of the present Protocol

Annex IX

RESOLUTIONS ON THE PROTOCOL ADOPTED BY THE ASSEMBLY, OCTOBER 2, 1924

RESOLUTION No 1

THE Assembly,

Having taken note of the reports of the First and Third Committees on the questions referred to them by the Assembly resolution of the 5th September, 1924,

Welcomes warmly the draft Protocol on the Pacific Settlement of International Disputes proposed by the two Committees of which the text is annexed to this resolution, and

Decides —

1 To recommend to the earnest attention of all the members of the League the acceptance of the said draft Protocol,

2 To open immediately the said Protocol in the terms proposed for signature by those representatives of members of the League who are already in a position to sign it and to hold it open for signature by all other States,

3 To request the Council forthwith to appoint a Committee to draft the amendments to the Covenant contemplated by the terms of the said Protocol,

4 To request the Council to convene an International Conference for the Reduction of Armaments, which shall meet at Geneva as provided by the following stipulations of article 17 of the draft Protocol —

> " In preparation for the convening of the Conference, the Council shall draw up, with due regard to the undertakings contained in articles 11 and 13 of the present Protocol, a general programme for the reduction and limitation of armaments which shall be laid before the Conference and be communicated to the Governments at the earliest possible date, and at the latest three months before the Conference meets
>
> " If by the 1st May, 1925, ratifications have not been deposited by at least a majority of the permanent members

of the Council and ten other members of the League, the Secretary-General of the League shall immediately consult the Council as to whether he shall cancel the invitations or merely adjourn the Conference to a subsequent date to be fixed by the Council so as to permit the necessary number of ratifications to be obtained "

5 To request the Council to put into immediate execution the provisions of article 12 of the draft Protocol

RESOLUTION No 2

The Assembly

Having taken cognisance of the report of the First Committee upon the terms of article 36, paragraph 2, of the Statute of the Permanent Court of International Justice,

Considering that the study of the said terms shows them to be sufficiently wide to permit States to adhere to the special Protocol, opened for signature in virtue of article 36, paragraph 2, with the reservations which they regard as indispensable,

Convinced that it is in the interest of the progress of international justice, and consistent with the expectations of the opinion of the world, that the greatest possible number of States should, to the widest possible extent, accept as compulsory the jurisdiction of the Court

Recommends —

States to accede at the earliest possible date to the special Protocol opened for signature in virtue of article 36, paragraph 2, of the Statute of the Permanent Court of International Justice

Annex X

CONFERENCE FOR THE REDUCTION OF ARMAMENTS

RESOLUTIONS ADOPTED BY THE FIFTH ASSEMBLY AT ITS MEETING ON THURSDAY, OCTOBER 2, 1924

I The Assembly recommends the Council to place the question of Regional Agreements for the Reduction of Armaments on the agenda of the International Conference for the Reduction of Armaments

II Whereas the majority of the States which have replied have stated that, with certain exceptions, they have not exceeded the expenditure on armaments shown in their last budgets, and whereas the recommendation addressed to the Governments relates to the period which must elapse before the meeting of the International Conference for the Reduction of Armaments, which is to take place next year

The Assembly does not consider it necessary to repeat the recommendation regarding the limitation of expenditure on armaments, as this question is to be placed upon the agenda of the International Conference for the Reduction of Armaments.

III The Assembly is of the opinion

1 That another technical conference on naval disarmament is unnecessary

2 That the question of naval disarmament should be discussed as part of the general question of disarmament dealt with by the International Conference proposed in the resolution of September 6th, 1924, adopted by the Fifth Assembly, and that it rests with the Council to settle the programme

IV The Assembly requests the Council, in preparing the general programme of the Conference for the Reduction of Armaments provided for in Article 17 of the Protocol, to consider the advisability of including in that programme the following points

1 General plan for a reduction of armaments in accordance with Article 8 of the Covenant, in particular

(*a*) Basis and methods of reduction (budget, peace-time effectives, tonnage of naval and air fleets, population, configuration of frontiers, etc.)

(*b*) Preparation of a typical budget for expenditure on armaments

2. Special position of certain States in relation to the reduction of armaments

(*a*) Temporary reservations by countries exposed to special risks,

(*b*) Recommendations of regional agreements for the reduction (or limitation) of armaments

3 Recommendation of the establishment of demilitarized zones (Article 9)

4 Control and investigation of armaments in the contracting States

The Assembly also requests the Council to instruct the competent organizations of the League to examine the schemes relating to the above questions which have already been submitted to the Third Committee, or which may subsequently be received by the Secretariat, and to take them into consideration in preparing the programme of the Conference